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ABSTRACT

These hearings present testimony before the Senate Subcommittee on Aging. The purpose of the meeting was to amend the Older Americans Act of 1965 to provide assistance for legal services projects for the elderly. In addition to testimony and statements from a variety of expert witnesses, a number of articles, publications, and written answers to specific questions are included. (Author/BP)

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# LEGAL SERVICES FOR THE ELDERLY, 1977

## HEARING

BEFORE THE

## SUBCOMMITTEE ON AGING

OF THE

## COMMITTEE ON HUMAN RESOURCES

## UNITED STATES SENATE

NINETY-FIFTH CONGRESS

FIRST SESSION

ON

## S. 1282

TO AMEND THE OLDER AMERICANS ACT OF 1965 TO PROVIDE ASSISTANCE FOR LEGAL SERVICES PROJECTS FOR THE ELDERLY

OCTOBER 4, 1977

U.S. DEPARTMENT OF HEALTH, EDUCATION & WELFARE
NATIONAL INSTITUTE OF EDUCATION

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# LEGAL SERVICES FOR THE ELDERLY

OCTOBER 4, 1977

U.S. SENATE,
SUBCOMMITTEE ON AGING OF THE
COMMITTEE ON HUMAN RESOURCES,
*Washington, D.C.*

The subcommittee met, pursuant to notice, at 9:30 a.m. in room 1224, Dirksen Senate Office Building, Senator Edward M. Kennedy presiding pro tempore.

Present: Senators Eagleton, Kennedy, and Chafee.

Senator KENNEDY. We will come to order.

The chairman of the subcommittee, Senator Eagleton, will be here momentarily, but his presence is necessary in the markup of wiretap legislation in the Judiciary Committee at the same time. He is the principal sponsor of that legislation, and I have had to excuse myself. So I will start in by making a statement on this piece of legislation before the presence of our chairman very soon.

## OPENING STATEMENT OF SENATOR KENNEDY

Mr. KENNEDY. Today the Subcommittee on Aging of the Human Resources Committee, under the able leadership of the senior Senator from Missouri, begins hearings on S. 1282, the bill which I sponsored, which would provide an authorization for legal services programs for the elderly under the Administration on Aging.

The bill which is under examination today is the result of a series of investigations that I undertook, including hearings in Boston and Washington when I was a member of the Special Committee on Aging. The bill attempts to meet the crucial demand for legal services among the elderly, that was demonstrated in those hearings and in repeated studies.

We will hear today from Thomas Ehrlich, of the Legal Services Corporation; Gary Kolb, of the Administration on Aging; Edward King and Robert Cohen, of the National Senior Citizens Law Center; and David Marlin, of Legal Research and Services for the Elderly. I hope that they can confirm for us the continuing need of the elderly for these legal services and comment upon the specific attributes of the bill before us.

Mr. Chairman, my bill would authorize grants to State agencies on aging to support a staff person within the agency. He or she would oversee and coordinate the delivery of legal advice and technical assistance on a wide range of issues. This person would provide direct client representation when necessary, mostly in test case situations in which

the coordinator wishes to participate. Additionally, funding would be authorized for area agencies on aging to contract with providers of legal services for the elderly. These providers would either be Legal Services Corporation recipients or nonrecipients who have demonstrated a commendable service record; other providers may be considered for contracting if necessary.

The Legal Services Projects for the Elderly Act would allocate at least 80 percent of the funds to State and area agencies on aging and up to 20 percent for legal services resource centers. These resource centers provide technical assistance to groups providing legal services for the elderly. There are currently 11 such centers, and they are doing a very effective job.

S. 1282 will reach out to those elderly poor who are not reached today by the Legal Services Corporation because of the Corporation's limited funding. Importantly, it will reach out as well toward those elderly who live on limited sources of income, such as social security, which sources may barely exceed Legal Services Corporation standards but which still leave them vitally dependent upon legal services.

The reasons why the elderly are so dependent upon legal services are clear. First, upon reaching retirement age, older Americans rely increasingly upon Federal programs—such as social security, medicare, supplemental security income, food stamps, veterans pensions, railroad retirement, and others. They depend upon these programs for their very livelihood.

The figures point out the extent of that vulnerability. In 1975, those over 65 represented 10 percent of the population, but 30 percent of the health costs in this country. Two-thirds of the health costs of those above 65 are borne by the Government. Social security accounts for over half of the income for 7 out of 10 individuals over 65, and half of the couples over 65.

Supplemental security income is the sustenance of 2¼ million older Americans. And there is clear evidence that this program is not reaching most of the people that it should be serving; there are 7 million aged who are poor or near poor, most of whom would qualify for SSI but are not receiving it.

Second, the elderly are more likely to suffer untoward effects from unsatisfactory dealings with other private individuals. They are more likely to suffer from housing problems or energy disruptions. For instance, they are far more likely to be traumatized when their landlord does not send up the heat, or make repairs, or if they are evicted.

Third, the elderly have been given new rights in recent years which may take court actions to enforce—for instance, transportation systems built with Federal funding have special requirements to meet the needs of the elderly.

All too often, the incredible maze of regulations, applications, certificates, and documentation necessary to qualify for benefits or correct errors in benefit rates leave the elderly weak and bewildered.

All too often, private parties simply ignore the pleadings of the elderly and leave them to suffer indecent housing or insufficient heating. All too often, ignorance by the elderly or by the community of the congressionally and State mandated services which localities should provide to the elderly means that the elderly are ignored in planning social and public services.

Many of the elderly simply give up and accept decisions which affect their rights because they do not know the remedies available to them, they do not know what their rights are, or they do not have the stamina to pursue them.

Through the years I have tried to help the elderly obtain these vital services. In 1975 I cosponsored the Older Americans Legal Counseling and Assistance Act which was later incorporated in the Older Americans Amendments of 1975 at my suggestion. I took part in efforts to see that at least $1 million of section 308 funds be used for legal services. I proposed amendments to title IX to include legal services in the definition of community services. Most recently, I introduced amendments to the Legal Services Corporation Amendments of 1977, which have been included in the Senate version—and counterpart proposals were included in the House version—of the act which will mandate special consideration for those groups in the legal services client community which have been underserviced, specifically including the elderly.

But I do not believe that those measures have been enough to meet the critical needs of the elderly.

So, Mr. Chairman, I believe that it is necessary to add to the legal services available to the elderly through the mechanism embodied in S. 1282, the bill we are considering today.

[A copy of the bill S. 1282 follows:]

95TH CONGRESS
1ST SESSION

# S. 1282

IN THE SENATE OF THE UNITED STATES

APRIL 7 (legislative day, FEBRUARY 21), 1977

Mr. Kennedy introduced the following bill; which was read twice and referred to the Committee on Human Resources

# A BILL

To amend the Older Americans Act of 1965 to provide assistance for legal services projects for the elderly.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That title III of the Older Americans Act of 1965 is amended by adding at the end thereof the following new section:

"LEGAL SERVICES PROJECTS

"SEC. 310. (a) (1) From 80 per centum of the sums appropriated pursuant to subsection (e) for each fiscal year the Commissioner is authorized, in accordance with the provisions of this subsection and subsection (b) of this section, to make grants to States having a State plan approved under

section 305 for the purposes of paying not to exceed 75 per centum of the costs of legal services projects.

"(2) The Commissioner shall allot such 80 per centum to each State in an amount which bears the same ratio to such per centum as the population aged sixty or over of that State bears to the population aged sixty or over of all States, except that Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands shall each receive an amount equal to one-fourth of 1 per centum of such per centum.

"(b) (1) Grants made pursuant to subsection (a) of this section may be used for—

"(A) supporting a staff person within the State agency designated under section 304 (a) (1) whose functions include (i) supervising and coordinating the delivery of legal services to the elderly within that State, (ii) providing legal advice and technical assistance in litigation matters and legislation relating to the elderly in that State, and (iii) providing direct client representation, whenever necessary; and

"(B) supporting direct legal services by providing funds to area agencies designated under section 304 (a) (2) (A) for the purposes described in paragraph (2) of this subsection.

"(2) Any funds received by an area agency under clause (B) of paragraph (1) of this subsection may be used only to enter into contracts for the furnishing of legal services in accordance with this paragraph. No contract may be entered into to provide more than 90 per centum of the cost of furnishing legal services to the elderly under that contract. The area agency designated under section 304(a)(2)(A) shall enter into contracts—

"(A) first, whenever possible, with recipients of assistance under the National Legal Services Corporation Act in the appropriate area, and

"(B) then, with the approval of the State agency and the Commissioner, with other providers of legal services.

No contract may be entered into under this paragraph unless the furnishing of legal services is in addition to legal services for the elderly already being furnished in the appropriate area. When determining the non-Federal share of the costs of programs conducted pursuant to contracts entered into under this paragraph the contractee may count for the purpose of meeting the non-Federal share of such costs, the cost to the contractee of existing legal services for the elderly in the appropriate area.

"(c) From 20 per centum of the sums appropriated

pursuant to subsection (e) of this section the Commissioner is authorized to make grants to or enter into contracts with national resource centers to—

"(A) support research, technical assistance, training, and litigation and legislative support to agencies, organizations, institutions, private firms, and bar associations who are providing legal services to older persons, and

"(B) provide legal advice to elderly clients.

"(d) The Commissioner shall report annually to the Congress on the effectiveness of programs assisted under this section, on the impact on the quality of legal services available to the elderly by programs assisted under this section, and on the impact of programs assisted under this section on coordinating and encouraging the efforts of other agencies and organizations to provide legal services to the elderly.

"(e) There are authorized to be appropriated $20,000,000 for the fiscal year 1978, $25,000,000 for the fiscal year 1979, and $30,000,000 for the fiscal year 1980, to carry out the provisions of this section.".

Senator KENNEDY. I look forward to the testimony of our witnesses on this subject.

I would just say in conclusion, as I mentioned in the comments, that there is no group of people in our society which has more of a contact with the Government or governmental agencies than people who turn 65 years of age. The whole range of different services, whether housing or food stamp programs, or SSI or medicaid or medicare for the elderly people in this society, and, as our first witness understands, with the limitations on the legal service programs deal with incomes which are 125 percent under the poverty level. We realize that the elderly people in so many instances are right at that breaking level in terms of poverty and they may be just at poverty or somewhat about it, and just can't afford the $40 or $50 an hour for legal services, and yet their whole kind of orientation to a great extent relates to the structures of government. I do know that there are many hard working, decent, wonderful, motivated people in the governmental agencies who are trying to help the elderly, but, as in any kind of bureaucracy, there are many instances where it takes more than the willingness of someone working in the civil service. It has to take the shaking of that whole kind of system to provide the adequate protection for senior citizens.

It just seems to me that this has been a group which has fallen between the cracks in terms of insuring that the Constitution of the United States is going to reach them, and it seems to me that this builds upon a tried and tested program in terms of the legal services and it is a recognized need and it is a very targeted program, and it seems to me to be one that is really justified.

I know there are particular concerns in terms of the working through area agencies, which we are going to talk to, the role of the Legal Services Corporation and of the resources that ought to be there, rather than being able to go to an alternative effort in providing these kinds of services and these kinds of arrangements have to be examined. We will hear testimony on that today. But these are important considerations. We are very interested in listening to those who have had a good deal of experience in these areas on the way we proceed.

In the legislation we have provided what I consider to be the best approach on it, but we are wide open and I want to hear from people who are dealing in these areas as to what their recommendations are.

I might ask Senator Chafee, along with, I think, Massachusetts, we probably have the greatest number of elderly people to ratio of population of any part of the country. Up until recently it was Iowa and one or two of the Midwestern States, where an awful lot of the young people had actually left because of the lack of opportunity on the farm and there was a disproportion, but I would say probably there is no section in the country where there are greater concentrations of elderly people than in our part of the country, and they continue, obviously, to be an invaluable asset and resource for our communities and for the families, and we want to make sure that their interests are protected.

I don't know whether Senator Chafee wants to make a comment.

Senator CHAFEE. Thank you very much, Senator Kennedy, I would be interested in hearing the testimony of the witnesses, and I am ready to continue if you are.

Senator KENNEDY. Mr. Ehrlich, we are pleased to have you here.

## STATEMENT OF THOMAS EHRLICH, PRESIDENT, LEGAL SERVICES CORPORATION, WASHINGTON, D.C.

Mr. EHRLICH. Thank you very much, Senator Kennedy. I am happy to be here on behalf of the staff of the Legal Services Corporation and to comment specifically on S. 1282—"A bill to amend the Older Americans Act of 1965 to provide assistance for legal services projects for the elderly." We enthusiastically support the measure.

We have some specific suggestions for your consideration and I hope I may submit my prepared statement for the record and simply underscore some of the key points here this morning. With your permission then, I think there is no need to repeat to the members of the subcommittee the need for legal service for the elderly, especially the elderly poor. You well recognized that need several years ago when you established legal services as a priority under the Older Americans Act. As a result there has been a significant amount of activity in many parts of the country.

Unfortunately, however, as your comments suggested, many aging agencies have been unable or unwilling to respond, in large part because there are so many needs competing for the very limited funds available under title III. The 3-year limit on the use of those funds has created some additional problems.

S. 1282 deals with those difficulties by creating a separate stable source of funding for legal services for the elderly—a much-needed source.

Some of the legal problems of the elderly, of course, are unique to their own age group. Most, however, are much the same as those of the poverty population generally, and they stem from a lack of income and from a dependence on public programs. They raise fundamental issues of the quality of life and all too often issues of basic survival itself.

The substantive legal problems of the elderly are compounded by their relative immobility, limited access to legal services providers, unawareness of legal rights, and reluctance to use services perceived as charity. Because of these difficulties related to delivery, legal services for the elderly poor tend to be more expensive than services to the poor generally, and often more difficult to provide.

No one at the corporation views this legislation as substituting for or supplanting our responsibilities to support legal assistance to the elderly poor. Even without the maintenance of effort provision in the bill we would take that position. The Corporation and the legal services programs we fund have an affirmative obligation to the elderly poor, just as much as to every other group of women and men without the resources to hire an attorney.

My prepared statement summarizes the activities of the Corporation for the elderly poor in some detail. They are also described in the statement I submitted to the Civil Rights Commission on September 27, and I ask that that statement also be submitted for the record, with your permission.

The simple fact is that there aren't enough resources to provide services to any segment of the low income population. The impact of that

fact is felt most severely by the groups for whom services require extra effort and extra resources—particularly, of course, for the elderly.

The Legal Services Corporation is trying to deal with the particular problems of serving the elderly. Later this month the National Legal Aid and Defender Association will hold its annual meeting where professional groups of legal services attorneys and paralegals will meet and devote much of their program to this very issue.

Individual projects are struggling to expand and to improve their services to the elderly, using whatever resources they can. Some have been able to develop special, and in many cases, very innovative approaches to help senior citizens. I cite many examples of those in my prepared statement. They show, I think, that even a relatively minor expenditure of funds for senior citizens often results in a very significant expansion in services to the elderly. Those examples make a persuasive case for the bill you have introduced, Senator, S. 1282.

Let me comment briefly on four issues raised by the provisions of the bill. The first is the relationship between this legislation and the local legal services programs. In our own view it is essential that legal services activities undertaken with Older Americans Act funds be closely linked to the established legal services network. This is not solely a matter of avoiding duplication and inefficiency. Most important, it is a question of providing the highest quality of service to clients.

We strongly support section 310(b)(2), which requires that, whenever possible, area agencies contract with existing legal services programs of proven ability. This isn't solely a matter of avoiding duplication and unnecessary administrative expenses, although those are part of the issue. More fundamentally, it is a question of providing the highest quality of legal services to clients who need those services.

Attorneys and paralegals working on problems of the poor all need the mutual support that comes from close association and working within the context of the legal services programs. Advocates for the elderly have the opportunity for close consultation, for advice, and in many cases for the consolidation of cases and for the aggregation of claims. They need the benefit of the expertise of other program attorneys in complex areas of the law that directly affect their elderly clients. They can also make certain that the work done by other attorneys in the office take into consideration the needs of the elderly in their community.

In most communities the legal services program is the focal point of all legal services activities for the poor—not just those funded by the Corporation, but those supported by a variety of other public and private sources as well. It makes little sense to set up totally separate efforts on behalf of the elderly where those programs already exist. Moreover, channeling funds through established legal services programs helps to assure that services are directed to those elderly clients with the greatest need for free legal assistance.

We recognize that the Older Americans Act prohibits the use of a means test for senior citizens receiving services with funds appropriated under that act, but with limited resources it is essential to concentrate on those persons with the greatest needs. In the case of legal services that means those elderly persons without the resources to hire an attorney.

I do not suggest that all of the work need be done in the legal services office. In fact—as the examples I cite in my statement suggest—a great deal of the activity would take place in senior citizens centers, particularly the outreach, the community education, and in some cases even the client intake activities. But those activities cannot be successful if they take place in a vacuum. They can only arouse false expectations unless they are closely linked to the attorneys and paralegals that can provide the legal representation.

A second cluster of issues raised by S. 1282 involves the balance between the direct delivery of legal services and the other activities authorized by the legislation. We recognize the vital importance of training, technical assistance, and support activities to assure quality services to clients. In addition, a State agency may support direct legal services by providing funds to area agencies, which are to use the funds to enter into contracts for the delivery of legal services. There is no guarantee, however, that any of those funds will ever reach the area agencies, or that a substantial portion of the total appropriation will result in actual services to clients.

We agree that there should be an effort at stimulating the private bar and law schools to be of assistance. As presently drafted, however, we are concerned that there is a danger that resources may be used to create unnecessary bureaucracies. We believe that the bulk of the funds provided under S. 1262 ought to be used for direct delivery of services to elderly clients, and we do hope that the subcommittee will assure that will be the case.

A third closely related issue goes back to the question of maintenance of efforts. The purpose of this bill is to expand not to refinance services. We are concerned that even with the maintenance of efforts by the Corporation, passage of S. 1282 could result in a reducduction of funds for direct services to the elderly because there is no maintenance of effort required of State or area aging agencies. That may not be a problem if Congress appropriates the full $20 million authorized. If the appropriation were substantially lower, however, and if a State agency decided to reserve a substantial portion of its allotment for its own purposes, then it is conceivable that less money would be available to some area agencies under section 310 than they are now using for legal services under title III.

We well understand there is some opposition to an absolute maintenance of effort requirement. At the very least, however, we believe that statute should make clear that State and area aging agencies may continue to use title III funds for legal services, and they must do so if the section 310 funds are insufficient to maintain their previous commitment to legal services.

Our final and fourth cluster of concerns relates to the resource centers authorized by section 310(c) of the bill. We support the change that would permit the Commissioner to fund State, local, and regional centers as well as national entities.

Our own experience has demonstrated the importance of statewide litigation and administrative and legislative representation. All of the demonstration projects funded under the delivery system study are State or local projects. As members of this subcommittee know, the Legal Service Corporation Act of 1974 now restricts Corpora-

tion funding of research, training, and technical assistance by grant or contract. The limits on our ability to fund these activities on a regional or State level creates inefficiencies. We are grateful for the efforts of the Senate Human Resources Committee to eliminate that restriction. It seems equally important to provide that flexibility in the Older Americans Act.

The term "resources center" itself raises some questions of definition, particularly with regard to demonstration projects authorized by section 310(c). We think that the concept should be broad enough to include a request to the Commissioner from law schools, bar associations, legal services programs, and others who might seek to undertake some of the activities authorized by this section. We suggest that the subcommittee clarify this point in the language of the bill itself, or in the committee report.

In conclusion, I reiterate our enthusiastic support for S. 1282, with the concerns and suggestions noted. Again, however, I emphasize that my own testimony and recommendations cannot substitute for the expertise of legal services providers throughout the country. We regret that the subcommittee does not have time today to hear from a good many providers of legal services who are eager to present their views. My testimony and recommendations on behalf of the staff of the Corporation cannot substitute for theirs. We urge you to solicit their views on S. 1282 to provide an opportunity for their testimony at a later date.

I also hope that as many subcommittee members as possible will visit some of the programs providing legal services to the elderly in your own States and regions. We would be pleased to help identify those programs and arrange the visits.

Again, I am grateful for this opportunity to appear before you, and will be pleased to answer your questions.

Senator CHAFEE. Thank you very much, Mr. Ehrlich. I have a couple of questions. In the Older Americans Act and the Legal Services Corporation Act, there is a difference in the income eligibility provisions. The Older Americans Act has no means test and the Legal Services Corporation places eligibility at 125 percent of the poverty level.

Now, has this difference caused any major problems to those programs which have Older Americans Act funding for the purposes of serving the elderly?

Mr. EHRLICH. No, Senator. The difference does not create insurmountable problems. The legal services programs funded by the Corporation now receive funds from a number of different sources whose eligibility standards are different than our own.

It obviously complicates the programs' bookkeeping somewhat, but those problems can be handled. It is important to emphasize, we think, that when resources are limited, even under the Older Americans Act, some priorities must be established.

Obviously, communication and referral can be provided without regard to income, but when it comes to questions of providing legal representation then the case of a person, an elderly person, who has been threatened with eviction or loss of SSI benefits, ought to come before the writing of a will for somebody who can afford to pay $50 for the service.

One of the advantages, we think, of handling funds through a legal services program is that its assistance is concentrated where low income people live. It affects the poor and the elderly poor. Without a means test for the elderly, the service would tend to focus on those with the least resources and the most need.

Senator CHAFEE. It seems to me we are getting to a point that is going to be raised on the floor in connection with this whole program. That is, as you say in your testimony, and as you have said previously in your testimony to the Commission on Civil Rights: We are dealing with legal problems that affect the elderly primarily because they live in poverty, and they are not problems particularly associated with the fact that they are elderly.

So then we get to the question. Should we have increased support for the Corporation rather than establishing a new program that is restricted to the elderly? That is the gut issue, I think, that we are going to have to deal with in defending this program, and I would like to know your reaction to that.

Mr. EHRLICH. Our obligation is to do the best we possibly can to insure that poor people have access to the legal system and have some chance to use it. In our own considered judgment, the elderly poor often are shortchanged, and the near poor as well, as Senator Kennedy suggested. We think the most effective and efficient way to provide services to those elderly is through existing legal services programs. In part, this is simply a matter of administrative efficiency. But as I suggested, I think it goes beyond that because the lawyers in legal services programs can provide to those specifically working on problems of the elderly expertise and help in a way that wouldn't be possible if there were separate entities established.

I have visited legal services programs throughout the country, and I have been impressed and exhilarated by the work, the dedication, and the ability of those women and men to provide the service. I am confident that if the arrangement developed in S. 1282 is established, then we will have an effective way to provide that service. It does cost more to deliver services to the elderly—that is quite true. Outreach efforts are needed that aren't needed for those in younger groups, and it is key for us to link our overall efforts to the aging network. We are committed to doing that, and we are going ahead with that process. I am convinced that under the arrangements established by this bill, we will have ways to achieve the goals you are interested in.

Senator CHAFEE. It seems to me what we are worrying about is that we don't want somebody coming in to get legal services, who is 58 years old, and the lawyers say, "No. Sorry. I am a specialist. I only take those who are 60 and over. Go next door." That doesn't seem to be very efficient, and I would like your comments on that.

Mr. EHRLICH. You are exactly right, Senator. I couldnt' agree more. It would not be efficient. The persons need help and chances are, when they walk into that office, are desperate for help, because all too often the law and lawyers are a scarey business. They want that help and want it now, and they ought to have it now. This bill provides a way to do that by providing the extra funds needed to give the elderly special kinds of service, and to be sure that we have the necessary links to the aging network. It would not establish a separate office off

on the side that the person would be shunted to, as would be inevitable if this bill had instead set up separate agencies to provide services for the elderly.

Senator CHAFEE. In your testimony—on page 7—you spoke about New Hampshire:

> Through the New Hampshire Senior Citizens Law Project, a paralegal is placed in each of the eight offices of the statewide legal services program to work specifically on the problems of the elderly.

It seems to me—and you can contradict me if I am wrong—that the legal problems of the elderly require more tenacity than they do esoteric legal knowledge; that the legal problems of the elderly probably break down into about three sections: Problems with social security, problems with rent and landlords, and "other"; but it seems to me the problems must be legally fairly simple. That doesn't mean that it doesn't take a great deal of persistence to solve them, but I think this might be an area that would be peculiarly adaptable to paralegal personnel involvement. Is that an oversimplification?

Mr. EHRLICH. With all due deference, Senator, a great many of those problems involve enormous complexity, particularly in the area of administrative benefits. Just fighting through the maze of rules and regulations takes an enormous amount of skill and expertise, fully as much as the most complex area of the law that I have seen. Many of these cases relate to very sophisticated, complex, and difficult areas of the law.

On the other hand, many concern issues such as basic rights of a tenant. The fact that the tenant is elderly won't affect the case and very often a paralegal with some specialized training, working under a lawyer's supervision, can provide a good deal of assistance for the elderly person—you are absolutely right. But it is also true, in fairness, that many of the areas of the law relating to the elderly—and I think particularly in the administrative benefits field, and pensions as well—are complex and require specialization. Indeed, it is the legal services offices around the country, helped by the support centers that work in those areas, that have the necessary expertise.

Senator CHAFEE. Fine. Now, Mr. Chairman, I have a couple of other questions. What suggestions do you have as to the proportion of funds that should be used for so-called backup centers as against direct representation? Now, I know that the proportion would vary depending on the actual appropriation, but let's assume the appropriation were in the $10 million to $20 million range; what is your sense of a provision which allows up to 20 percent of the funding to be used for backup centers and 80 percent to be used at the State and area level. Do you have any sense of this?

Mr. EHRLICH. Yes, we do realize the proportions would differ depending on the total amount actually available under S. 1282. At the $20 million level, the proportion to be spent on resource centers—on nondirect service, in other words—would obviously be less than at the $5 million level. We don't offer a precise formula, but I would certainly think it is not unreasonable to expect that something like 75 percent, at least, ought to be spent on direct services—75 percent of the total amount available under this bill.

Senator CHAFEE. Seventy-five percent at least?

Mr. EHRLICH. At least. I should have introduced Judy Riggs, the Director of our Office of Government Relations, who is here with me. She reminded—as I said in my prepared statement—that this means not just the amount directly available under the act for resource centers, but also the amount that goes through the agencies. They should, in our view, properly be required to use a fixed percentage for direct services; otherwise they might substitute these funds for direct service funds now available.

Senator CHAFEE. Now, you have had some experience with the so-called seed money, model projects. Could you just touch briefly on the relative merits and demerits of that type of approach to legal services as compared to the continuous funding? You mention in your testimony some varied approaches here. It seems to me we are always interested in stimulating a local bar association or other organizations to try something and get on their own, rather than permanent dependence on the Federal Government. Would you give us your reaction to that?

Mr. EHRLICH. We are interested in precisely the same end, as mandated by the Legal Services Corporation Act of 1974. We have now some 38 different demonstration projects around the country experimenting with different types of delivery techniques. A number of those, as the prepared statement indicates, focus particularly on service to the elderly and how to overcome the difficult problems—often of outreach—in the way of service to the elderly. Our goal now is that service, and if those demonstration projects work well, we will keep them and continue to fund them. In all events, we will continue the service to the people.

We have found in some cases that with encouragement, bar groups and others have provided more service to the elderly—and to other groups as well—than they had before, and one of our important jobs is to stimulate pro bono efforts on the part of the private bar.

Fundamentally, I think the real problem is the need for more service, and the way the service is going to come is through efforts such as this bill, which provides the funding for it. Seed money and demonstration projects can help in some cases, but the fundamental problem is simply an agonizing lack of help for those who very much need help, and that is why the public funds are needed, and we are pleased this bill provides them.

Senator CHAFEE. It struck me as a trifle discouraging that bar associations have never provided service on a steady basis which is any way near equivalent to what I think medical association and doctors have certainly before the third party payers came into the prominence that they have now. At least in the bar associations it is all very voluntary rather than required to apply $x$ hours to some kind of service to indigents or low income people.

Are there any bar associations that do this, that require, from the most experienced, wealthiest, corporation lawyer down to the beginning lawyer, all to pitch in to serve this group? Is there anything like that in the Nation?

Mr. EHRLICH. There are a number of proposals around the country to do just that, and I frankly spend a great amount of my time whining and complaining at bar groups to do more because we need that help.

In the State of California a bill was introduced, though not approved yet, to require 40 hours a year pro bono time in the part of all lawyers. Others have suggested different standards, among local and State bars, of required time. There is a fair amount of support for some such standard, and a good deal of resistance as well.

Senator CHAFEE. I suspect your statement of a good deal of resistance is the most understatement of the year.

Mr. EHRLICH. As one who does complain a good deal and criticize a good deal the private bar, I ought to add, though, that I am enormously impressed by how many private lawyers do give their time and talents to legal services for poor people.

Mr. CHAFEE. On their own time rather than through a bar association?

Mr. EHRLICH. Some of the efforts here in the District of Columbia are coordinated by the bar. The bar has a full time pro bono coordinator, whose job it is to match the needs with the talents of private lawyers. In this bar there are many lawyers who give an enormous amount of time just to help the poor and others who need that assistance who can't afford it. So there are some striking examples of just what you are talking about, although I quite agree that a good deal more is needed.

Senator CHAFEE. A striking example because of their rarity?

Mr. EHRLICH. Because of the fact that there are people who care, who see a chance to do something important, and who do it. Those efforts—I should underscore—will never, I am sure, supplant the efforts of full time legal services lawyers, but they are much needed supplements.

Senator CHAFEE. Fine. Thank you very much, Mr. Ehrlich.

We have our distinguished chairman here.

Senator EAGLETON [presiding]. Thank you, Senator Chafee. I appreciate your conducting this hearing this morning, and, Mr. Ehrlich, I am sorry I couldn't be here for your prepared statement. I would like to ask a couple of questions before we move to our next witness.

The general philosophy of the Older Americans Act is that people on the State and local level know the needs of the elderly and perhaps know better about it than we do in Washington. Therefore the Federal Government, it is argued, should allow the States and the area agencies a great deal of flexibility in the entire decisionmaking process.

Now, how do you square that philosophy with what you would establish under this bill, a new section within title III, for legal services? How do you square that with the overall philosophy that there ought to be great flexibility in the decisionmaking process with respect to State and area agencies on aging?

Mr. EHRLICH. I think the philosophy—at least in terms of saying that those on the local level know most about the needs of the particular groups that need help—is very much consistent. Every single program funded by the Legal Services Corporation has its own independent board composed of members of the community. By statute 60 percent are lawyers and by statute and our regulations at least one-third are clients or client representatives. They are able to know, as well as can be known, the needs in that community and to respond to those needs. I think they respond flexibly in terms of tailoring the efforts of the program to serve the elderly.

Senator EAGLETON. I think we all know there has been a continuous problem with respect to the Older Americans Act in terms of the amount of Federal funding. It has never gotten to the level that many of us would like to have seen. In fiscal 1978 we are to spend about $750 million on the Older Americans Act. Now, let's suppose next year that OMB allows—well, let's make it a 10-percent increase, and their recommendation for next year, instead of being $750 million, they will up that to $825 million or maybe at the most $850 million.

In your opinion, should we put that new money, that additional $75 or $100 million into the presently existing programs so that they can be operated with a greater intensity and greater outreach, perhaps with greater effect, or should we leave the funding level of those other programs pretty much as they are and then use that extra money to fund the new section, which is contemplated under title III for legal services? Do you follow my question?

Mr. EHRLICH. Yes, Senator, and we are not in a position to compare the priorities in terms of needs for the elderly. We recognize there are a good many pressing needs. We don't suggest a ranking, on a relative basis, of what we perceive as very acute needs for more legal help. Our expertise is limited to legal services and legal services for the elderly.

What we do say is that—assuming that you conclude that this need ought to be a priority, as we hope you will, because we see the acute need—we think this is the way to do it, But we can't compare it to a good many other kinds of needs that we know exist.

Senator EAGLETON. You see I will have to make that kind of comparative analysis. I believe I am the only Member of the Senate who serves on this committee, chairman of the subcommittee, and I am also on the HEW Appropriations Subcommittee and the full Appropriations Committee. So I have to—because my mind works along those lines—I have to think in terms of not only authorization and the creation of a program, but then how much money to put into it at the other end of the line. We find in literally hundreds and I guess thousands of instances where you have a limited Federal budget, the allocation of $25, $50 and $75 million becomes a very difficult process. I have to think in terms of, well, would it be better to go off on yet another new program when we know already that we are inadequately funding programs that already exist, whether they are nutrition programs for the elderly or housing programs for the elderly or transportation programs for the elderly, the whole range of needs and problems insofar as American senior citizens are concerned.

I ask myself a question from time to time, wouldn't we be wiser to do a limited number of things and do those well, with greater intensity, than to have an unlimited number of things where we are putting a nickel here and a dime there and a quarter there?

Mr. EHRLICH. I make only two comments, Senator, and I recognize the difficulty of wrestling with competing claims. The first is that legal services in general, and legal services for the elderly in particular, is not a new enterprise. We know how to do it. It is of proven worth, and if the provisions of this bill are followed, we can be absolutely confident that it will work and provide direct service on a very cost-effective basis. It has been proven. No new technological breakthrough is needed in order to assure that the service will be there, that the

service will be of the highest quality, and that the service will do an enormous amount of good.

The second point is this: we have also seen that a relatively small amount of that $750 to $800 million you mention—$20 million—can do an enormous amount of good. It is a relatively small portion, I realize, but it can have an immense wallop and be of great benefit to people who very much need it.

Senator EAGLETON. As I travel around my home State of Missouri, I visit the nutrition centers for the elderly. Since I had something to do with the creation of that program, I take a special interest in it, and I visit these nutrition centers, if they be in a church basement or in a schoolhouse or in some kind of civic building in a small town, and so forth. I come through at the noon hour and eat a meal with these senior citizens, talk to them, and try to get a better feel of how things are going.

Just in the August recess I was at one in southeast Missouri, where the capacity for that program is 80 senior citizens, capacity being the financial limitations under which they must operate. I was told by the people there that there are 100 other senior citizens who would like to be able to join in that nutrition program for the elderly, but since the funding level can only accommodate about 80, that is tough. The other 100 can't participate.

Now, I just cite that one example because it is very fresh in my mind. I was just there a few weeks ago. Now, what should I be thinking about in terms of those 100 people who are not now eligible to participate in the nutrition program and would like to be eligible? Should I think in terms of funding that, and if I do, where am I going to get the money?

Mr. EHRLICH. There is no question, again, that there are competing claims. What we have seen time and time again is that for relatively very small amounts, Legal Services lawyers and paralegals around the country are really law enforcement officers who see to it that the programs you describe—ones that the Congress establishes—provide the service that is intended.

We see that, incidentally, quite directly in the nutrition field. If benefits have been cut off unfairly and wrongfully, it is Legal Services lawyers who step in and see to it that the people who were unjustly denied the benefits under a particular piece of legislation, receive those benefits.

Senator EAGLETON. I think we will get into that question maybe in the Administration witnesses, but it is a problem that is a very real one that we have to face up to.

There is a question I would like to ask. I think Senator Chafee did. I am told he did ask it, and I know it will be duplication, but since I wasn't there when he asked, I will be interested in hearing your answer. In your testimony, you state as follows:

> The overwhelming majority of legal programs that affect the elderly and juveniles occur because they live in poverty, not because of particular problems associated with their age.

If this be the case, should we be concentrating our efforts on increasing support for the Corporation rather than establishing a new program with a special focus on the elderly?

Mr. EHRLICH. We need that increased support for the Corporation, Senator Eagleton, and we are very grateful for your own efforts to help obtain it.

I emphasize, however, that there are special difficulties in reaching out to the elderly, and those difficulities in outreach, education, and so forth, deserve, I think, a particular kind of attention that this bill provides. This bill also does not, of course, have the eligibility limitations, as Senator Chafee indicated, that we operate under. In other words, all elderly would be able to receive service—though priorities would have to be established inevitably. This would enable those, as Senator Kennedy said at the outset, who are near poor—who can't afford legal help but still have desperate crisis problems—to receive that help on the most effective basis possible through a legal services program.

Those in legal services face the same kinds of issues that you describe in regard to other programs. They must turn away thousands and thousands of people because they don't have resources to serve them. This bill would be an important step toward helping in the service of the elderly, a group that much needs that service.

Senator EAGLETON. Thank you, Mr. Ehrlich, very much.

Senator CHAFEE. Mr. Chairman, I would like to ask one question. I share the chairman's interest in the nutrition side of the Government's activities, and we have had an extremely good program in our State, which has provided all kinds of benefits that extend far beyond nutrition—including companionship, sociability, getting the elderly out—and all these have been great benefits.

Now, let me ask you a question, which I don't want you to misunderstand—and anybody could easily misunderstand it if they want to—but in your experience with this program and dealing with those elderly who use your services now under the Legal Services Corporation, do you find that you have a certain group that might be looking at the element of litigation or litigious activities as rather a social outlet, and that you will find a very small percentage of the elderly are taking a disproportionate amount of your time?

In my practice I would find frequently that when we extend services to some elderly, it was a very social program, social in companionship and fellowship, and they really enjoyed coming around to the office, and I was delighted to see them, but they had more time than I did. Do you find that, or is that an unfair statement?

Mr. EHRLICH. I understand the question, Senator, and it is certainly a fair one. I am really quite confident the answer is no; we do not find that. The reason is this: To anyone, but particularly a poor person, the law is a scary business, and lawyers, too often, are scary people.

Learned Hand once said he couldn't think of anything more terrifying than a lawsuit.

If you are poor and relatively less educated, the possibility of being hit with a subpeona duces tecum or some other document you don't understand is terrifying.

Senator CHAFEE. No question about that.

Mr. EHRLICH. All too often we find that the problem is just the reverse from the one you are suggesting—that those who need help

don't come until it is late or, sadly sometimes, too late. They don't come to get in out of the cold. They come because they are in desperate trouble. They need help, and if they are lucky, there is a program to help them and somebody with a little time to help them, and they get some assistance. But it is not the kind of social gathering place that you suggested. What I would really like to do at some point is have the Legal Services Office in your own State have the opportunity to show you the kinds of things they are doing there.

Senator CHAFEE. I am certainly going to go by and take a look.

Mr. EHRLICH. Because you would see, I think, these problems all too clearly, all too sharply.

Senator CHAFEE. Maybe my problem was the office was made too relaxed and too inviting a place.

Mr. EHRLICH. Well, that is not an issue for any legal services program in the country.

Senator CHAFEE. Thank you very much.

Mr. EHRLICH. Thank you, Senators.

[The prepared statement of Mr. Ehrlich follows:]

# TESTIMONY OF THOMAS EHRLICH
# PRESIDENT OF THE LEGAL SERVICES CORPORATION

on

## S.1282, A BILL TO PROVIDE ASSISTANCE FOR LEGAL SERVICES PROJECTS FOR THE ELDERLY

before the

## SENATE HUMAN RESOURCES COMMITTEE
## SUBCOMMITTEE ON AGING

October 4, 1977

Mr. Chairman and Members of the Subcommittee. On behalf of the staff of the Legal Services Corporation, I am pleased to accept your invitation to discuss generally legal services for the elderly and to comment specifically on S.1282 - "A bill to amend the Older Americans Act of 1965 to provide assistance for legal services projects for the elderly." The Board of Directors of the Corporation has not taken a formal position on the pending proposal, but the Corporation staff has examined it carefully. Although we have not had the opportunity to consult widely with legal services practitioners, and cannot speak for them as a whole, we have discussed the bill with several attorneys and project directors who have substantial experience in the delivery of services to the elderly. We naturally cannot comment on the relative priority of legal services in comparison to other assistance for the elderly. We do know, however, that those services are vitally necessary, and that insufficient public funds are available to meet the need. On that basis, we support this bill with enthusiasm. We also have several specific suggestions regarding it.

Several years ago, this Subcommittee established legal services as a priority for use of funds under Title III of the Older Americans Act. That step has resulted in increased activity in many parts of the country, but many aging agencies have been unwilling or unable to respond because of the limited funds available for the elderly in Title III. The three-year limit on the use of these funds has created additional problems.

S.1282 recognizes these difficulties and attempts to deal with them by creating a separate, stable source of funding for legal services for the elderly.

We commend the Chairman, and Senator Kennedy -- the principal sponsor of S.1282 -- for leadership on the specific matter of legal services for the elderly, and for continued efforts in the Senate to expand legal services for all of the poor. The Corporation staff is eager to work with the Subcommittee, the Administration on Aging, and the aging network, in support of our common goal of strengthening legal services for the elderly.

We need not reiterate for the members of the Subcommittee the need for legal services among the elderly, particularly the elderly poor. Some of the legal problems of older poor persons are unique to their age group -- guardianships, nursing home conditions, and home care are examples. Most of those problems, however, are the same as those of the poverty population generally. They relate to dependence on public benefits programs -- Social Security, the Supplemental Security Income (SSI) program, food stamps, veterans benefits, and medicaid are among the most important. Other problem areas involve housing, consumer, and health-related issues. All of them concern the quality of life; basic survival is often at stake. The substantive legal problems of the elderly are compounded by their relative immobility, limited access to legal services providers, unawarenss of legal rights, and reluctance to use services perceived as charity. Because of these difficulties related to delivery, legal services for the elderly tend to be more expensive than services generally, and often more difficult to provide.

Resources for legal assistance for all segments of the low-income population are inadequate. The programs with which we work are forced to turn away eligible clients with serious problems, because attorneys and paralegals already have as many cases as they can possibly handle. In such circumstances, there is under-

standable reluctance to devote resources to extensive outreach and community education, especially when there is no staff to handle additional clients. This situation has a particular adverse impact on persons with problems of access, including many of the elderly. The legislation before the Subcommittee recognizes this harsh reality and attempts to provide a partial solution.

I

None of us at the Corporation view this legislation as substituting for or supplanting our responsibilities to support legal assistance to the elderly poor. S.1282 requires maintenance of effort supported with Corporation funds, but we would take this position even if that provision were not in the bill. The Corporation and the legal services programs we fund have an affirmative obligation to the elderly poor, just as much as to every other group of woman and man without the resources to hire an attorney.

We have presented detailed testimony to the Senate Special Committee on Aging, describing the Corporation's efforts on behalf of the elderly. On September 27, I appeared before the United States Civil Rights Commission to discuss these activities. Rather than repeat that testimony before the Subcommittee today, I have provided a copy of my statement to the Commission and ask that it be made a part of the record of this hearing.

To summarize, the Corporation's current and planned activities include:

* Support for separate units for the elderly within larger legal services programs.

- The award of "special needs" grants to several legal services programs to support a paralegal or attorney to work with the elderly.
- Funding of national centers that offer expertise in complex areas of the law affecting the elderly. These centers provide direct client representation in litigation that affects large numbers of the elderly poor. In addition, they offer support and assistance to local legal services practitioners in cases that demand their expertise.
- In-service training for attorneys and paralegals working with elderly clients, including training in basic skills, federal practice, and administrative representation, as well as specialized training in substantive areas of the law, such as the SSI program.
- Research in substantive areas of the law affecting the elderly, and seminars to bring legal services practitioners up to date on new developments in various areas of the law.
- As part of a study of delivery of legal services to the poor - mandated in the Legal Services Corporation Act of 1974 - eight demonstration projects that focus exclusively or substantially on alternative or supplemental methods of serving the elderly.
- The assignment of a Corporation employee -- a former legal services attorney -- to the Administration on Aging to work on the issue of expanding and improving legal assistance for the elderly.

Of particular significance to the elderly is the requirement the Corporation has imposed on every legal services program to establish priorities for

services, in consultation with all segments of the client population, and to review those priorities regularly. The purpose of this priority-setting process is to bring to an end any "first-come, first-served" practice -- a practice that adversely affects those eligible clients with problems of access, and to assure that the most urgent legal needs of the low-income community receive first attention.

The Corporation has received increased appropriations from the Congress as part of a plan to bring existing legal services programs to a level that will provide at least "minimum access" for the poor, and to provide services at that level in parts of the country where there have been no programs in the past. We have defined the "minimum access" level as the equivalent of two lawyers per 10,000 poor people. The addition of these resources, combined with the new priority-setting requirements and the continued efforts of the Corporation in areas of support, technical assistance, training, research, and demonstration projects will have the effect of increasing services to all of the poor, including the elderly. But the Corporation cannot now -- or in the foreseeable future -- meet all of the needs. Even at the "minimum access" level -- which we hope to achieve in Fiscal Year 1979 if Congress provides sufficient funds -- legal services programs will have few, if any funds for the extra effort required to expand services to clients with special access problems.

II

The legal services community is painfully aware of the legal needs of the elderly and the limits of the community's ability to respond to that need. At

its annual convention later this month, the National Legal Aid and Defender Association -- the professional organization of legal services attorneys and paralegals -- will devote a full afternoon (a quarter of its program agenda) to a discussion of this important issue.

Programs throughout the country are struggling to deal with the problem of delivering service to the elderly. Some -- though all too few -- have been successful in finding additional funds to expand their efforts. Through a combination of resources -- from the Corporation, state and area aging agencies, United Way, Title XX of the Social Security Act, VISTA, CETA, and private funds -- they have developed special and, in many cases, innovative approaches to reach senior citizens. These include separate offices and mobile units for the elderly, specially designated attorneys and paralegals working in regular offices, regular intake at senior citizens centers, home visits to the confined elderly, talks by legal services staff at elderly meal sites, development of community education materials, and training of personnel working with senior citizens. The following are examples of these special efforts.

- In Albuquerque, New Mexico, the legal services program has opened a completely separate law office for the elderly, in an easily accessible shopping center frequented by older persons. Basic support for the office comes from Title III funds, supplemented by VISTA volunteers and retired attorneys. The regular program provides support and consultation, and cases requiring expertise beyond the capabilities of the special office staff may be referred to attorneys in the regular program who have that expertise.

- In a more modest effort, Legal Aid of Metropolitan Denver uses a small grant from the aging agency and the help of two private organizations for a special senior unit that does outreach and community education. Cases of the elderly clients identified by this unit are handled by the regular program staff. Since the unit has been in operation, the proportion of elderly served by the program has risen from 6 percent to 14 percent of its total caseload.
- At Greater Miami Legal Services, 26 percent of all clients are elderly, and one office is designated specifically for senior citizens. That office handles most of the elderly clients served by the program and, in addition, provides outreach at senior meal sites and prepares community education materials. Most of the support comes from Corporation resources, supplemented by a small amount of county revenue sharing money. The legal services program has tried to obtain Title III funding for an additional senior citizens office, but its applications have been rejected.
- Through the New Hampshire Senior Citizens Law Project, a paralegal is placed in each of the eight offices of the state-wide legal services program to work specifically on the problems of the elderly. The paralegals make weekly visits to all of the senior citizen centers in the state, and have prepared a manual for use of personnel from other agencies working with the elderly. Since the paralegals have been in place, the proportion of elderly served by the program has more than doubled.

* Vermont Legal Aid has placed an attorney in each of its offices in the State, to work exclusively on the problems of the elderly. All client intake is handled at senior centers and nutrition sites. The program sees the potential for an increase in the number of elderly served to about 25 percent of the total caseload.
* The Michigan Senior Citizens Law Program in Ann Arbor combines the staff resources of Washtenaw County Legal Aid, the University of Michigan Law School, and the Institute of Gerontology.
* Several local programs in New Jersey have combined small amounts of money to support a senior paralegal. Through the paralegal's education activities, visits to senior citizens centers and clubs, and participation on radio talk shows, she has increased the awareness of senior citizens of their legal rights. Just as important, she has sensitized the legal services attorneys and staff to the problems and needs of the elderly.

As these examples suggest, it is impossible to dictate nationally a single best approach to the needs of the elderly. The strength of the legal services program rests, to a great extent, in its local character. Each local program is not an office of branch of the Corporation. It is an independant, non-profit entity, governed by its own board of directors, one-third of whom are eligible clients or client representatives. The varied approaches taken to serve the elderly demonstrate the value of this local control. Even a relatively minor expenditure of funds for a special senior citizens effort often results in a significant expansion of the overall program's services to the elderly. I can think of no better testimony in support of S.1282.

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III

Let me turn now to some specific issues raised by the provisions of S.1282.

First, it is absolutely essential that the legal services activities undertaken with Older American Act funds be closely linked to the established legal services network. This is not solely a matter of avoiding duplication and inefficiency. Most important, it is a question of providing the highest quality of service to clients.

We strongly support Section 310(b)(2), which requires that, whenever possible, area agencies contract with existing legal services programs. We understand that the sponsor of S.1282, Senator Kennedy, plans to offer a perfecting amendment in Subcommittee to include in this preferential consideration not only legal services programs funded by the Corporation but other legal services projects that have demonstrated experience in the satisfactory delivery of legal services to the elderly. Certainly, a program of proven ability should not be excluded from this preference simply because it does not receive funds from the Corporation. We support the expansion of the provision in this way and urge that this preference be clearly specified in the law.

Experience in the delivery of legal services to the poor has demonstrated that an attorney practicing in isolation from other attorneys cannot provide efficient, quality services to his or her clients. On the most practical level, an established legal services program can offer library and other resources not available to an attorney or paralegal working alone. More important, attorneys and paralegals representing the poor need the support of others engaged in similar practice. As I indicated at the beginning of my testimony, most of the legal problems of the elderly are not substantially different from those

of other low-income persons. Working in the context of a legal services project provides the opportunity for consultation, advice, coordination, and -- when it is in the best interest of the client -- the consolidation of cases or aggregation of claims.

An attorney representing an elderly client on a consumer problem, for example, may benefit from the assistance of a legal services attorney with expertise in consumer law. An attorney representing a senior citizen in a housing matter may find that another attorney in the office is representing non-elderly clients in cases raising the same issue. The elderly client may be better represented by consolidating the cases. A paralegal representing an elderly person on a food stamp issue will benefit from discussions with other paralegals representing clients before the same agency.

Much of the work funded by S.1282 should naturally take place in senior citizens centers. But the outreach and community education activities should not occur in a vacuum. They will only arouse false expectations unless there are attorneys and paralegals to handle the legal problems identified through those activities.

In many states and communities, the legal services program is the focal point for all legal assistance activities, with support not just from the Corporation but from a variety of other local, state, and federal sources. It makes no sense to set up separate legal services projects for the elderly where those programs already exist. Moreover, channeling funds through established legal services programs helps to assure that services are directed to those elderly clients with the greatest need for free legal assistance. We recognize that the Older Americans Act prohibits the use of a means test for senior citizens

receiving services with funds appropriated under that Act. The Corporation does not seek to impose its income eligibility standards for services provided under S.1282. With limited resources, however, every effort must be made to assure that they are utilized for those with the greatest need.

A second issue raised by S.1282 is the balance between the direct delivery of legal services and the other activities authorized by the legislation. Section 310(a) reserves 20 percent of appropriated funds for resource centers. The balance is allotted to the states, according to the relative number of persons over age 60. Section 310(b)(1) specifies that the state agency may use its funds to support activities within the agency itself, including supervision and coordination, advice, training, and technical assistance, as well as direct client representation. In addition, the state agency may support direct legal services by providing funds to area agencies, which are to use the funds to enter into contracts for the delivery of legal services. There is no guarantee, however, that any of those funds will ever reach the area agencies, or that a substantial portion of the total appropriation will result in actual services to clients.

We recognize the vital importance of training, technical assistance, and support activities, to assure quality services to clients. As I indicated previously, the Corporation devotes significant resources to such activities. We believe, however, that most of the funds provided under S.1282 should be used for the direct delivery of services, and hope that the Subcommittee will make this clear in the statute and the Committee report. We will be pleased to work with the Subcommittee and the Administration on Aging to help develop a proper balance

between service and support.

A third, closely related matter concerns maintenance of effort. As I indicated, we fully agree with the requirement for maintenance of effort financed with Corporation funds. Without question, the objective of S.1282 should be to expand, not to refinance services. We are concerned, however, that even with maintenance of effort by the Corporation, passage of S.1282 could result in the reduction of funds for direct delivery of legal services to the elderly, because there is no maintenance of effort required of state or area aging agencies. This may not be a problem if Congress appropriates the full $20 million authorized by S.1282. If the appropriation were substantially lower, however, and if a state agency decided to reserve a substantial portion of its allotment for its own use, then less money might conceivably be available to some area agencies under Section 310 than they are now using for legal services under Title III.

A maintenance of effort requirement for state and area agencies, like the requirement imposed on the Corporation, would assure that funds under Section 310 would be used for new or expanded activities. We understand that there is some opposition to such a maintenance of effort provision. At the least, however, we urge that the statute make clear that state and area aging agencies may continue to use other Title III funds for legal services and that they must do so if Section 310 funds are insufficient to maintain the present commitment to legal services.

A final concern is raised by Section 310(c), which authorizes funding for resource centers. We understand that an amendment will be offered to eliminate the word "national," thereby permitting the funding of local, state, and regional

centers as well. We support that change. The Corporation's own experience has demonstrated the importance of state-wide litigation and administrative and legislative representation. All of the demonstration projects funded under the delivery system study are state or local projects. As members of this Subcommittee know, the Legal Services Corporation Act of 1974 now restricts Corporation funding of research, training, and technical assistance by grant or contract. The limits on our ability to fund these activities on a regional or state level creates inefficiencies. We are grateful for the efforts of the Senate Human Resources Committee to eliminate that restriction. It seems equally important to provide that flexibility in the Older Americans Act.

The term "resource center" itself raises some question of definition, particularly with regard to demonstration projects authorized by Section 310(c). We think that the concept should be broad enough to include a request to the Commissioner from law schools, bar associations, legal services programs, and others who might seek to undertake some of the activities authorized by this section. We suggest that the Subcommittee clarify this point in the language of the bill itself, or in the Committee report.

In conclusion, I reiterate our enthusiastic support for S.1282, with the concerns and suggestions noted. Again, however, I emphasize that my own testimony and recommendations cannot substitute for the expertise of legal services providers throughout the country. We regret that the Subcommittee did not have time to hear from them today, and urge you to solicit their views on S.1282 and to provide an opportunity for them to testify at a later date. In addition, we hope that members of the Subcommittee will visit some of the programs providing legal services to the elderly in your own states and regions. The staff of the Corporation will be pleased to help identify such programs and arrange such visits.

On behalf of the staff of the Corporation, thank you for this opportunity to appear before you today.

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Senator EAGLETON. Our next witness is Donald F. Reilly.

In 1975 Congress amended the Older Americans Act to include legal services as a priority under title III State and community programs. the legislation presently before this committee, S. 1282, would expand upon that authority by creating a separate funding authority for legal services for the elderly.

Mr. Reilly, we welcome you and you may proceed.

## STATEMENT OF DONALD F. REILLY, DEPUTY COMMISSIONER, ADMINISTRATION ON AGING

Mr. REILLY. Mr. Chairman, would you agree to my just submitting our statement for the record and making some brief opening comments in terms of the evolution of legal services and paralegal services under the Older Americans Act?

Senator EAGLETON. Your full statement will appear in the record as though read and give us the highlights of it. We would like to hear them.

Mr. REILLY. I won't repeat anything in terms of the need for the legal services for the elderly because Senator Kennedy's statement and your statement set out the need very dramatically and very clearly.

In the 1973 amendments to the Older Americans Act, legal services were included as a service eligible for funding under the Older Americans Act, title III.

In 1975 that was added to by making it one of the four priority services under title III of the act.

Senator EAGLETON. Would you refresh my memory on the four?

Mr. REILLY. The four were legal services, transportation, home services and home repair.

Senator EAGLETON. Right.

Mr. REILLY. Between the enactment of the 1973 and 1975 amendments, the Administration on Aging funded a number of model projects to get into the legal services business. We funded the National Senior Citizens Law Center, Legal Research on Service for the Elderly of the National Council of Senior Citizens, and the National Paralegal Institute as technical assistance providers to the State agencies on aging and area agencies on aging. The purpose was to build their capacity to promote legal services for the elderly in the various areas throughout the country, and, to the maximum extent possible, link those legal services in with other services for older persons.

In response to the 1975 amendments, we took a further step with model project moneys. We made an award available to each State agency on aging that was willing to hire a legal services development specialist. That person, an attorney, is to put capability on the State agency staff to provide leadership in this field and to work with the area agencies on aging to accelerate the development of legal services. Those funds were made available as of last January, and so this is a very recent development.

The legal services development specialists have been coming on duty in the various State agencies from January on through the spring. At this point we have virtually a full complement aboard and working to develop services for the elderly.

Senator EAGLETON. These legal specialists that are brought onboard in essence they are funded or their salaries are paid out of Federal funds?

Mr. REILLY. That is correct. They are treated as a temporary supplement to the State agency to add this necessary capacity.

Senator EAGLETON. Let's take Missouri or Rhode Island.

Senator CHAFEE. Just to pick two States out of the air.

Mr. REILLY. Two good States.

Senator EAGLETON. I wonder if your records indicate how many specialists are onboard in Missouri and where they are and what they are paid.

Mr. REILLY. Mr. Chairman, what we provided was funds for one such person in each State.

Senator EAGLETON. One person. California has one?

Mr. REILLY. That is correct.

Senator EAGLETON. Delaware has one?

Mr. REILLY. That is correct. It was a seed money approach.

Senator EAGLETON. Are they lawyers?

Mr. REILLY. Yes, they are lawyers, but they are not intended to engage in casework themselves. Their job is to work with the Legal Services Corp. offices, the area agencies on aging, the private bar, legal aid societies, whoever is available, to increase the availability of legal services and paralegal services for the elderly.

Senator EAGLETON. What can one lawyer do in this regard in the State of California?

Mr. REILLY. Promotional and technical assistance activity principally. It is too early to get a full reading on it, but the initial reports out of California were that this position has, in just a few months, been making a visible impression in terms of drawing attention to the need for services for the elderly, getting local bar associations focused on the issue, and working with the Legal Services Corp. offices in California to increase the legal services to the elderly.

Senator EAGLETON. Mr. Ehrlich, take California, let's stick with that. Has the presence of one lawyer on the State level of the Office of Aging in California been of much help to you insofar as rendering legal services to the elderly is concerned?

Mr. EHRLICH. I cannot specify about the situation in California, although I will find out and let you know if you would like.

Senator EAGLETON. I would because it is a huge State, an enormously huge State with an enormous elderly population. In Florida, what can one lawyer do in Tallahassee?

Mr. REILLY. I would like to pick up on that. Our visualization of how this should work is not the hiring of one lawyer who, in this vast geographic and populous area, goes around working as one person trying to develop legal services. You do have a State agency on aging with a substantial staffing in California. You do have a network of area agencies that are in place around the State. Our view of what this person is to do is to provide legal expertise and leadership to these other people as they do the promotional work in their areas.

[The following information was subsequently supplied for the record:]

LEGAL SERVICES CORPORATION
733 Fifteenth Street, N.W., Washington, D. C. 20005 (202) 376-5100

Thomas Ehrlich
President
E. Clinton Bamberger, Jr.
Executive Vice-President

January 26, 1978

Honorable Thomas F. Eagleton
Chairman, Subcommittee on Aging
6226 Dirksen Senate Office Building
Washington, DC 20510

Dear Senator Eagleton:

During your hearings on S. 1282, you asked whether the presence of one legal services developer in a state the size of California, for example, could be of much help in actually securing legal services for the elderly in the state.

The Legal Services Corporation has not conducted an evaluation of the legal services developer program, and it may still be too early to fully assess its success or failure. Certainly the National Senior Citizen Law Center and the Administration on Aging can best describe the efforts to date. I am aware, however, of significant progress made by the developers in many states, and am persuaded that even with extremely limited funds, they serve an important and useful function.

In many states, the developers are in close contact with legal services programs, and have assisted them in coordinating services for low income elderly clients, and securing additional funding. Developers have set up conferences within the aging network to link up those engaged in the delivery of other social services for the elderly with those responsible for the provision of legal assistance. The outreach and education efforts undertaken by many state developers have brought about greater awareness of the legal rights of elderly citizens - and the availability of legal services programs to protect and vindicate those rights.

While the developer concept is further along in some states than others, overall there are strong indications that the presence of a single developer in a state can make a difference in the provision of

*LEGAL SERVICES CORPORATION*



legal assistance to low income elderly individuals; because that single person has the information about the availability of existing services and funding sources, and more important the capacity to inform and educate others.

I hope this information is of assistance to you.

Cordially,

Thomas Ehrlich

Thomas Ehrlich

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20201

Office of Human Development Services
Administration on Aging

30 DEC 1977

Honorable Thomas F. Eagleton
Chairman
Senate Subcommittee on Aging
Washington, D.C. 20510

Dear Senator Eagleton:

Thank you for your letter of October 26 asking additional questions with regard to my testimony on S. 1282. Please accept my apologies for the delay in responding.

Please find my response enclosed. I hope this will provide the assistance needed in the Subcommittee's examination of the legal services issue.

If I can assist you further in this matter, please feel free to contact me.

Very sincerely and cordially yours,

Donald F. Reilly

Donald F. Reilly
Deputy Commissioner on Aging

Enclosure

ADDITIONAL QUESTIONS FOR MR. DONALD F. REILLY REGARDING LEGAL SERVICES FOR THE ELDERLY, PRESENTED BY SENATOR EAGLETON, CHAIRMAN, SENATE SUBCOMMITTEE ON AGING

1. QUESTION: What efforts are now being made by the Administration on Aging to determine the need for legal services for the elderly?

RESPONSE: The term "legal services" raises two important problems in attempting to ascertain the need for such services by older persons. First, "legal services" can be narrowly defined as "lawyering services", or broadly defined as "promoting and securing the rights and entitlements" of older persons. Second, a "legal problem" can be narrowly defined as a problem requiring legal representation or, in a broad sense, as any problem that in one way or another relates to a law, regulation, policy, or rule.

The spectrum is, of course, definitional for both, but the effect clearly relates in a quantitative and qualitative sense to a determination of need - the broader the definition, the greater the number and kinds of needs within that definition.

The concept of "legal services" as envisioned, by the Administration on Aging, is much broader than "lawyering services". It is more appropriately termed "advocacy" or "securing the rights or entitlements of older persons," of which lawyering services is a part. Legal services is not a single specific service unrelated to the needs of older persons, but rather a broad advocacy service that is utilized to meet the legal and non-legal needs of older persons.

It is in this context that AoA is attempting to assess the need for legal services by older persons. Accordingly, the older person may need assistance in completing a homestead exemption or State tax rebate form, organizing a group of older persons to meet with public officials to express their particular concerns, creating a food-cooperative for older persons to obtain food at lower prices, responding to a cancellation of insurance or driving privileges, or in assuring that the older person obtains the maximum governmental benefits which he/she is entitled to. Each of these broadly defined "legal"

needs could be effectively secured by an advocate working with older persons. A lawyer's services would generally not be necessary.

Everyone agrees that some older persons have legal problems. "Some" older persons have "heck" problems, "family" problems, "neighbor" problems, "nutrition" problems, "transportation" problems, etc. The question becomes one of magnitude and seriousness that requires separate emphasis for older persons as an important segment within our society and as a top priority among older persons.

In order to answer this question, the Administration on Aging looks to the Older Americans Act for legislative guidance. The statutory Declaration of Objectives succinctly states the basic advocacy theme upon which the Act is predicated:

> Sec. 101. The Congress hereby finds and declares that ... the older people of our Nation are entitled to, and it is the joint and several duty and responsibility of the governments of the United States and of the several States and their political subdivisions to assist older people to secure equal opportunity to the full and free enjoyment of the following (ten) objectives.

The legislative history of the Act supports the conclusion that Congress intended advocacy to be the basic thrust of the Act.

The utilization of a broad interpretation of "legal services" and "legal problems" results in boundless numbers and kinds of problems that raise the magnitude and seriousness of the needs for advocacy to the same level as the plight of older persons as a whole in this country. It is, as the Act suggests, one of magnitude and scope that encompasses everything from an older person's income in retirement (e.g. Social Security, Supplemental Security Income, pensions, taxes, etc.) to his/her personal freedom and independence (e.g. guardianship, conservatorship, involuntary commitment, etc.)

As a priority service, it must be ranked high because of one additional factor: the lack of an appreciable amount

of legal services from other institutions or organizations in meeting the broad advocacy needs of older persons.

An integral part of the new legal services development model projects awarded to each State, Puerto Rico, Virgin Islands and the American Samoa, is the assessment of need for legal services by older persons within each State and territory. The Administration on Aging State Assessment Guide requests specific information on this assessment. The Administration on Aging Regional Office staff have been asked to work with the States in obtaining this information.

The task of truly assessing the legal needs of older persons is extremely difficult. We can no longer ask older persons. "Do you have legal problems?" "Please list in priority order your needs?" Rather, we must work to sensitize older persons to their rights and benefits and ask questions that will more closely indicate their needs.

2. QUESTION: Would you comment for the Subcommittee on your view of retaining the priority in existing Title III for legal counseling services, funding of legal services projects under model project authority, and the new authority being proposed? What coordination among the three authorities in Title III would you recommend, or should the priority for legal services in Section 305 be deleted? If S. 1282 is enacted, would the AoA continue to fund legal services projects under Section 308 Model Project authority?

RESPONSE: Congress has clearly manifested its intent in the 1975 Amendments to the Older Americans Act that legal services be considered as one of four priority areas for possible inclusion in every State plan. Although States need not adopt all four priority areas, they must spend 20% of their Title III allotment in "some or all" of the four priority areas.

The Administration on Aging supports the retention of legal services as a priority service based on the legislative intent of the Act, the multifarious advocacy needs of older persons, the inadequate funds available to provide the necessary legal services to meet those needs and the relative flexibility of area agencies within the four specified priority areas to adopt or not adopt one or more of the stated priorities based on a determination of local needs.

In regard to model projects, Section 308 of the Older Americans Act provides that model projects may be funded "which will expand or improve social services or otherwise promote the well-being of older persons." The Administration on Aging has consistently followed the Congressional intent by including legal services in the funding of model projects.

In 1975, the Administration on Aging made available 1.2 million dollars to support eleven legal services model projects in providing technical assistance and the development and demonstration of replicable training and service delivery models for the State and area agencies on aging and legal services providers. For the most part, the Administration on Aging has continued to fund legal services technical assistance model projects into fiscal year 1978.

In fiscal year 1977, an additional $1,125,000 in model project funds was provided on a formula grant basis to support the establishment of a legal services development model project in each State agency on aging. In fiscal year 1978, the amount was increased to $1,575,000.

The Administration on Aging has and will continue to fund a number of demonstration projects, including legal services model projects, pursuant to the expressed Congressional intent of Section 308. Of course, funding for model projects is always dependent on the availability of funds, meeting the funding criteria and successfully competing with other applicants.

It should be noted, however, that model projects' authority is limited to the demonstration of a select number of projects and in no way represents a permanent funding vehicle for any project, including legal services projects. For example, the model project grants of all of the legal services technical assistance model project grantees is scheduled to terminate on March 31, 1978. Unless they compete successfully for the limited funds available, they will no longer receive model project grants.

The new authority being proposed must be viewed in terms of the history of the Older Americans Act, the tremendous advocacy needs of older persons and the reality of present modes of funding legal services projects as model projects.

The proposed new authority would earmark funds specifically for legal services. Historically, the Department of Health, Education and Welfare has been opposed to earmarking as contrary to the intent of the Older Americans Act. In each case, however, where Congress has legislated some form of earmarking (e.g. Section 309 - Transportation; Title VII - Nutrition), the Administration on Aging has cooperated with Congress in assuring the full implementation of its intent. I can assure you of the same cooperation if the new authority is enacted into law.

In the event the new authority is enacted into law, I would recommend that the priority for legal services in Section 305(b) be retained. The Administration on Aging would, however, closely coordinate the funding authority under Sections 305, 308 and the proposed 310 to avoid duplication. Every attempt will be made to insure that funds obtained under Sections 305 and 308 will be utilized to provide legal services that complement the services provided pursuant to the proposed Section 310.

At such time as the appropriation level of the proposed new authority reaches a level sufficient for compliance with the Congressional intent and the stated goals of the Administration on Aging, I would recommend the deletion of the priority for legal services under Section 305 and the discontinuance of funding legal services model projects under Section 308. Until that time, the importance of legal services, as an expression of Congressional intent, should remain intact.

3. QUESTION: In his testimony, Mr. Ehrlich states that many aging agencies have been unwilling or unable to respond to increased activity in the legal services area because of the limited funds available for the elderly under Title III. Would you concur in that statement?

RESPONSE: It has been my experience that area agencies have made efforts to identify the needs of older persons and prioritize those needs within a service/funding framework. The task is complicated by inadequate funding levels and imprecise instruments for measuring the legal services needs of older persons.

The need for housing, transportation, food and medical services is easily identifiable. The assessment of the need for legal services is much more difficult. The result has been that many area agencies have ranked legal services as a low priority - a need, but only minimally pressing.

Even in those cases where legal services was ranked high as a priority, inadequate funding levels prevented many area agencies from effectively responding to the need.

An increased understanding of the legal services needs of older persons and adequate funding levels should result in an increase in the amount of Title III funds provided by area agencies for legal services. Absent a full understanding of such needs and/or adequate funding, many area agencies have been and will continue to be unable to respond to the increased activity in the legal services area.

4. QUESTION: The Administration on Aging and the Legal Services Corporation have signed a "Statement of Understanding." Can you tell the Subcommittee what specific activities are now being carried out by AoA to meet the objectives contained in that Statement? In your view, is it necessary or advisable to include a specific statutory provision requiring coordination between AoA and the Corporation?

RESPONSE: The Administration on Aging and the Legal Services Corporation have worked closely to insure the success of the Statement of Understanding. The Legal Services Corporation detailed a Legal Services Specialist and Secretary/Administrative Assistant to the Administration on Aging for the purpose of providing leadership in the area of legal services within the Administration on Aging, including insuring the achievement of the stated objectives in the Statement of Understanding.

The Legal Services Specialist is meeting with the various division staff within AoA and the legal services technical assistance model project grantees to exchange information and document the activities in achieving each of the stated objectives. Whenever possible, staff and grantees are encouraged to take the necessary action to achieve the stated objectives.

Specifically, the Administration on Aging, through its Legal Services Specialist and grantees, is working to sensitize lawyers and non-lawyer advocates to the legal problems facing older persons. For example, the Legal Services Specialist, in conjunction with the staff of several legal services technical assistance model project grantees, presented three panels on the legal services for older persons at the Annual Conference of the National Legal Aid and Defender Association in Detroit, Michigan.



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The Legal Services Developers in each State are working closely with the State Bar Associations to encourage the inclusion of the legal problems of the elderly in State conferences. On the national level, the Legal Research and Services for the Elderly, an AoA grantee, is working with the American Bar Association in the development of an Elderly Law Section and, hopefully, the inclusion of an elderly law session at the Annual or Mid-Year Conference of the ABA.

Several law schools and legal programs, including, the University of Michigan, George Washington University, Antioch Law School, Senior Adults Legal Assistance and the National Paralegal Institute, have received funding from the Administration on Aging under Title IV-A or Title III, Section 308, to develop curricula materials for legal training programs and other materials for use by law schools, legal organizations and legal services programs. A partial listing of the legal services related materials prepared by Administrative on Aging grantees is attached for your information.

The Administration on Aging sponsored a three-day conference in the summer of 1977 for legal services developers from states throughout the country. The developers were thoroughly exposed to workshops and materials relating to the legal concerns and problems of the elderly.

In the areas of training and access to existing or new legal services, the Administration on Aging has been working closely with the legal services technical assistance model project grantees and the State Legal Services Developers in obtaining specific data on the number of lawyer and non-lawyer advocates trained and working with older persons, and expanding the number of advocates trained and providing technical assistance to programs providing training. The legal services technical assistance grantees continue to develop model program materials on legal services for older persons and work for the expansion of the availability of technical assistance.

During 1978, the Administration on Aging will prepare a report of the specific progress in implementing the Statement. This report will be widely disseminated to interested individuals and organizations, including members of your Committee.

5. QUESTION: If S.1282 were enacted, can you give your assessment of the ways in which the funds that go to the states should be spent among the three functions delineating (sic) in subsection (b)(1) — the state developer; the provision of training and technical assistance; and the provision of legal services by the area agencies?

RESPONSE: If S. 1282 were enacted into law, the Administration on Aging would be mandated to make formula grants to the States and Territories for the purpose of supporting a State legal services developer/practioner, training and technical assistance and the direct delivery of legal services through contracts from the area agencies. Since no percentage breakdown of such funds is specified for the three required areas of support, the Administration on Aging would allocate a percentage for each based on the congressional intent.

The Administration on Aging is concerned with focusing the majority of its resources on supporting direct delivery of services to older persons. The greatest percentage of legal services money under an enacted Section 310 should be utilized to support direct legal services to older persons.

I would anticipate that under S. 1282 the States would continue to receive an amount sufficient to hire at least one staff person and costs. At the present, this amount is $26,800 per year for most states, with California receiving $52,644, New York receiving $51,983, and several other states receiving amounts slightly above $26,800.

I would hope that the present duties of the State developer as outlined in Program Instruction 77-13 would be continued under the functions stated in S. 1282. These duties include:

(a) working with Area Agencies on Aging in order to help them design legal services programs for older persons and to assist them in developing plans for the implementation of such programs by public or private agencies;

(b) assisting, working through Area Agencies on Aging, legal services corporation offices and/or legal aid programs to expand services and outreach efforts to eligible elderly clients and to design and secure funding for programs which would serve all older persons;

(c) assisting Area Agencies in Aging in involving the private bar in increasing legal services to older people;

(d) stimulating law schools and other educational institutions to provide research, law related training, and/or direct client services to the elderly;

(e) designing and coordinating through State and Area Agencies on Aging legal and aging training programs for State and Area Agency staff and grantees, paralegals, lawyers, and older persons;

(f) providing, working through the Area Agencies on Aging, assistance in developing legal back-up to the nursing home ombudsperson programs at the area level;

(g) working with the State Agency, Area Agencies, and other interested parties on the enactment of legislation at all levels of government designed to strengthen the legal position of older persons.

Areas of concern should include, for example, SSI, Social Security, food stamps, Medicaid, Medicare, veterans benefits, public and private pensions, nursing homes, taxation, housing, and welfare.

I fully understand that the staff person or persons supported within the State agency cannot develop legal services throughout the State forever. At some point the position

or positions must evolve with a new focus, possibly with the functions as stated in S. 1282 or others. The relative value of each in terms of an overall goal of making legal services accessible to older persons must be carefully analyzed and weighed. My preference is for a supervisory and coordinating role, with substantive technical assistance included where feasible, that encourages maximum utilization of resources throughout the State. The provision of direct client representation by the staff person may dissipate his/her ability to provide such services.

The funds for supporting the provision of training and technical assistance should be utilized to give each State the capacity to perform these functions for the legal services activities within the State. The staff person within the State agency should identify training and resource needs and provide the necessary supervision and coordination of efforts funded pursuant to S. 1282, Section 310(b)(1)(B).

## LEGAL SERVICES RELATED MATERIALS

The Administration on Aging has supported a number of Legal Services Projects for older persons. As a direct result of this support, many useful and interesting materials have been prepared for the aging network. If you should have any questions concerning the materials, you should contact the organization directly.

### PARTIAL LISTING OF MATERIALS

Institute of Law and Aging, National Law Center, The George Washington University, 716 Twentieth Street, N.W., Washington, D.C. 20052

Paralegal Training Materials on Legal Problems of the Elderly, This textbook length training manual is designed especially for the paralegal student interested in the field of aging. Subjects covered include legal research, structure of the legal system, unauthorized practice of law, Social Security practice, Medicare, Medicaid, and Supplemental Security Income ($30.00)

Legal Education and Aging, Manual developed for the Legal Education and Aging Conference held March, 1977. Concerned with ways of educating law students and paralegals in classrooms and clinics, and the resources available for training programs. (375 pp. $20.00)

Law School Supplementary Materials Series: Legal Problems of the Elderly

Administrative Practice in Social Security, A case book supplement designed for attorneys and law students. Cases and materials highlighting problems encountered in Social Security Administration proceedings are presented. (268 pp. $17.50)

Agency Practice in Supplemental Security Income, describes the new federal welfare program and the major cases interpreting the new act. (115 pp. $9.00)

Health Care Delivery Systems, a complete summary of the case law and statutes affecting health systems providing care for the elderly with special emphasis on nursing home responsibilities and liabilities ($15.00)

Consumer Problems of the Elderly, discusses major consumer frauds and problems to which the elderly are susceptible, including hearing aid and swindles and door-to-door sales. Model statutory remedies as well as selected cases are presented. (210 pp. $15.00)

Housing, the law for landlord and tenant as it pertains to the elderly with a thorough discussion of public housing provisions designed to aid older americans.

Taxation, tax benefits for older Americans are examined in detail along with a thorough description of the benefits of the new pension reform act.

Probate Problems of the Elderly, a brief synopsis of the problems of estate planning for the elderly client.

Antioch School of Law, 1624 Crescent Place, N.W., Washington, D.C. 20009.

A Curriculum on the Aging and the Law, materials designed for use in law schools.

Volume I. Aging in America
Volume II. An Overview of Social Security
Volume III Social Security -- Major Litigation Issues
Volume IV Social Security -- Administrative Hearings
Volume V Age Discrimination and Mandatory Retirement
Volume VI Supplemental Security Income
Volume VII Medicare
Volume VIII Protective Services and Probate
Volume IX Health
Volume X Legal Services for the Elderly
Volume XI Housing
Volume XII Consumer Fraud

Legal Research and Services for the Elderly, 1511 K Street, N.W. Suite 540, Washington, D.C. 20005

Law and Aging Manual, An overview of the legal problems facing the elderly, and a practical guide for establishing legal representation for the elderly on state and local levels, (1976) 147 pages. $3.00

Bibliography of Training Materials on Law of the Elderly, A listing of written materials, films, slides and filmstrips for training sessions. The bibliography is divided into four audiences: lawyers and law students; paralegals; social service workers and aging project staff; and older persons, (1977) 16 pages. $1.00.

Bibliography on Law and Aging, a listing by subject of law review articles, general background books and articles, in-depth social science research works, and reports of legislative committees, (1975) 43 pages. $1.00

Handbook of Model State Statutes, a collection of forty model state laws in areas affecting the elderly, (1971) 244 pages. Free

Guide to Use of Legal Resources by Nursing Home Ombudsmen and Citizen Action Projects, a discussion of the role of the legal profession in improving nursing home care (1975) 17 pages. $.50

Legal Services for the Elderly Poor, 2095 Broadway, New York, New York, 10023

A Survey on the Legal Problems of the Elderly Poor

An Interview Checklist for the Elderly

Social Security Hearing Procedures

How to Handle A Social Security Disability Case

Transportation Benefits for the Elderly

List of Accomplishments of Persons Past the Age of 69

Listing of Law Review articles re Age Discrimination:

Transfer Trauma - Its Effect on the Elderly

A Brief Outline of Entitlements Under S.S.I.

Supplemental Security Income

You and the Law: The Right to Work

What Do you Get with the Gold Watch? An Analysis of the Employment Retirement Income Security Act of 1974

Age Discrimination in Employment

A "Questionnaire for Veterans' Social Security Benefits Entitlement:

Mandatory Retirement is Unethical and Inefficient

How to Bring a Habeas Corpus

Louisiana Center for the Public Interest, 700 Maison Blanche Building, New Orleans, Louisana 70112

Law Referral Services Manual

Technical Assistance Memos

Protective Service Memos

A half hour audio-visual presentation on Interdisciplinary Methodology

National Paralegal Institute, Inc., 2000 P Street, N.W., Suite 600, Washington, D.C. 20036

Handouts: "What is NPI?"; "What is a CSA?";

A Short Review of the Non-Lawyer Movement

"Jobs with Service Programs: Legal Services" from the Occupational Outlook Quarterly

Expanding Legal Services for the Elderly: Role of the Non-Lawyer Advocate

Introduction to Concentrated Training Modules

Concentrated Training Module on CSA Roles and Advocacy Functions

Concentrated Training Module on Due Process

Concentrated Training Module on Medicare

A systematic Approach to the Development of Legal Services to the Elderly available on order at cost:

CSA I Trainers Manual

CSA I and II Curriculum

National Retired Teachers Association/American Association of Retired Persons NRTA/AARP Technical Assistance Materials, 1424 16th Street, N.W., Suite 204, Washington, D.C. 20036

Legal Counsel for the Elderly Information and Referral Manual - Free

Manual on Public Benefit Programs (accompanied by adaptation instructions) $35.00

Office Operations Manual, $10.00

Simple forms for Public Benefit Check-up: (a) Client Information Sheet; (b) Public Benefit Checklist; (c) Adaptation Instructions. Free

Training Materials: (a) Attorneys; (b) Volunteers (adaptation instructions); (c) Social Service Workers; (d) Community Legal Education Outlines; (e) Transparencies. a-d $15.00 e-$5.00

Wills and Protective Services: (a) Substantive materials; (b) Forms. $5.00

National Senior Citizens Law Center, 1709 W. 8th Street, Los Angeles, California 90017.
Materials can be obtained through National Clearinghouse for Legal Services, Order Department, 500 North Michigan Avenue, Suite 2220, Chicago, Illinois 60611

Handbook Directory of Federal Headquarters Sources Order No. 18.193, $2.00

Manual for Funding Sources and Models for Delivering Legal Services to the Elderly. Order No. 18.194 - $7.00

Nursing Home Law Handbook. Order No. 18.320 - $1.25

Age Discrimination. Order No. 18.453 - $.50

Mandatory Retirement. Order No. 18,454 - $.50

Consumer Problems. Order No. 18.455 - $.50

Housing. Order No. 18.456 - $1.25

Legislative Information. Order No. 18.457 - $1.00

A Short Summary of Title II of the Social Security Act. Order No. 18.458 $1.00

Veteran's Benefits and the Elderly Veteran. Order No. 18.459, $1.25

Legal Issues Affecting the Older Women in America Today. Order No. 18.460 $1.25

Materials on SSI and Social Security Disability

Legal Services Guidebook on California Estate Planning. Order No. 18,163 $2.50

Senior Adults Legal Assistance, 624 University Avenue, Palo Alto, California 94301

Newsletter - Assistance in the Law for Physically Handicapped Elders (ALPHE)

The California Natural Death Act: Its Use and Application - $1.00

Teaching Materials on Law and Aging, primarily designed for law schools but also useful in schools of gerontology and other disciplines. Chapters in the following areas:

Social Security
Medicare
SSI (Supplemental Security Income)
Medicaid
Consumer Problems of Elders
(Including hearing aids, lifeline rates, prescription drugs, etc.)
Private Health Insurance
Legal Problems of Older Women
Pensions (ERISA) and Retirement Plans
Age Discrimination in Employment and Mandatory Retirement
Nursing Homes
Protective Services
Legal Problems of Minority Elders
Legal Problems of Handicapped Elders
Psychology of Aging
History of Aging
Politics of Aging
Ethics and the Aging Process
Medicine and Aging

University of Michigan Institute of Gerontology/Law School, 520 East Liberty, Ann Arbor, Michigan 48109

Model curricula, clinical and in-service training program materials for use by community colleges and gerontological centers for training non-lawyers; continuing legal education programs for training practicing attorneys; and law schools for training law students through clinical education.

Senator CHAFEE. Is it an equal division of duties to have one for Rhode Island, which has a million people, and one for California, where there are perhaps 17 million people?

Mr. REILLY. I would say on the face of it it is not. However, what we are faced with is——

Senator EAGLETON. The politics of it?

Mr. REILLY. The politics of it and the money of it. What we did was to dip into our limited amount of model project funds to attempt to give a shot in the arm to the State and area agencies across the country in this particular specialized service. If there had been more money available, we could have granted the bigger States more. Obviously they could use more staff to mount the effort more vigorously.

Senator CHAFEE. Do you give one to every State in the United States?

Mr. REILLY. Yes, sir.

Senator EAGLETON. That is not unusual, I might say, Senator Chafee. We write into the various Federal laws the Vermont view, with all due respect to Senator Stafford, who is an able man who has fought for the needs of his State, and he and other Senators representing small States write a clause in that an irreducible minimum must go to Delaware and Vermont, and if there is anything left over California gets a second guy.

Mr. REILLY. That is often true, but it was not the circumstance here. We were working off a very small financial base. We did make somewhat of a distinction in that we provided more money to California and New York, but that was in the range of the difference between $22,000 and $50,000. Our problem was that if we funded a substantial amount into the larger States then States like Rhode Island would have wound up with an allocation for one-tenth of a legal services development specialist, which we didn't view as a very practical approach.

Senator CHAFEE. Go ahead. I am sorry to interrupt.

Senator EAGLETON. Mr. Reilly, you are the Deputy Commissioner?

Mr. REILLY. That is correct, sir.

Senator EAGLETON. Give me your list, forgetting for the moment the four priorities in this title—legal, transportation, home services and home repair—going beyond that into other titles in the Older Americans Act in other programs that your office helps administer or direct. Give me your own personal priorities of the unmet needs of the elderly that Congress should be paying attention to specifically in terms of the appropriation. Where do you think the needs are the greatest? Where do you think that the amount of funding is the most inadequate?

Mr. REILLY. In terms of priority, the impaired elderly are a particular concern. A phrase that is often heard expressed as a need is alternatives to institutionalization. It is very clear to us that the single most prevalent fear among older persons is the fear of having to go into a nursing home. This tends to be true regardless of how good that nursing home would be—and not all of them are good.

What we are thinking about in AOA is how we can focus the efforts of the State and area agencies, working with all of the service providers, to package services that will help maintain independent liv-

ing for older people and keep them involved in the community to the maximum extent possible and as long as possible. That is leading us to focus on the development of multipurpose senior centers and the provision of adult day centers.

We have funded some demonstrations of different kinds of day centers for impaired older persons. For example, if there is a working wife in the family, the older person can be taken care of during the day so that the family doesn't have to give up on that older person and have them enter into a nursing home.

We have tested a range of models. At one end of that range are what are called day hospitals. They have a heavy medical component. In the middle are the day centers. At the other end is the multipurpose center for the less impaired, and unimpaired, elderly. In the latter case we are looking to getting a bigger bang for the buck in terms of service investment by bringing services together, to the maximum extent possible, in one location.

As Mr. Ehrlich pointed out earlier, there are many potential tie-ins here. The numbers of older persons in multipurpose senior centers, in day centers, and day hospitals is such that services can be brought to the individuals there in an economical way. Legal services; people from Social Security Administration, relative to problems of OASI and supplementary security income; people from the welfare department in terms of food stamps and medicaid problems; outreach workers from the community mental health centers; and others. That is the way we are thinking, making services for all older people more accessible and coordinated, and developing special services for the impaired elderly.

Senator EAGLETON. Very good. Are you in the process of preparing your fiscal 1979 budget?

Mr. REILLY. Yes, we are, the early stages of it.

Senator EAGLETON. You are in the early stages of that, so you are preparing that within the area of aging, it will then go up to Secretary Califano, and then over to OMB, and then the President will send it over to us; right?

Mr. REILLY. That is right.

Senator EAGLETON. And am I right on the figures, the total amounts appropriated for fiscal 1978 for the Older Americans Act is somewhere in the neighborhood of $750 million?

Mr. REILLY. Including title IX, operated by the Labor Department, it is approximately $700 million.

Senator EAGLETON. I am not going to tie you down to this because you say you are in that process now, but chances are that OMB will not approve much more than, say, a 10-percent increase in that budget. That is sort of my rough ballpark guess. Maybe I am too stingy, but I am guessing what they might approve. So an additional $75 million.

Now, the programs that you have just described are programs to try to see that the senior citizens can stay in his or her home environment as long as possible before being institutionalized—multipurpose senior centers and others that you have just described—$75 million nationwide now will be very easily consumed by one or two of the several that you have mentioned, won't it?

Mr. REILLY. That would be true, sir.

Senator EAGLETON. Not to say anything about the cost of living factor of whatever inflation is—6 or 7 percent. That will consume over half of the $75 million there for the cost of living. So that these are rather tiny amounts nationwide to begin to cope with some of the things you have described, is that indicated?

Mr. REILLY. That is true, but one of the things we are looking at as we develop this line of planning is what other funds can be tapped into this kind of effort. How medicaid funds can be channeled into day centers, and day hospitals, and home care. One of the problems about medicaid has been that it tends to promote institutionalization because the money is there to support nursing home residents and very little money has been available out of medicaid to support home health activities and day center activities.

Now, that is the kind of thing we are working on. It isn't clear to us yet what all the answers are in this, but we are talking to the people in Public Health Service, for example, about cooperative programing.

Senator EAGLETON. You heard my exchange with Mr. Ehrlich, and I really should have addressed those questions more properly to you. Frankly, this is what troubles me, just to repeat for a moment what I said earlier. Should we do a few things in a half-baked, skimpy way, or do many things in a half-baked, skimpy way, or should we do a few things very well and very intensely.

Now, let me just give you an example of what I mean. We drafted a program called the Right to Read. It won the cliche of the month award for being the catchiest title, and it was our theory that every student in the United States had the right to read.

I won't bore you with this, but the reading deficiencies of young people in the United States is scandalous. People with high school diplomas are reading at the fourth grade level. There are people whose parents have brought suit against high school systems as sort of a breach of contract because when they graduated their youngster from high school, they thought he could read, and he couldn't fill out a credit card thing in the gas station. He couldn't get a job pumping gas because he couldn't fill out the slip. There are numerous examples. This isn't just unique or isolated in one or two cases. Reading skills in America are increasingly deplorable.

Right to Read, I think we are funding that with $29 million to cure the reading disabilities of the United States with $29 million. That much could be spent in the Washington, D.C. school system alone, say nothing of New York, Chicago and St. Louis and the others.

Now, I am openly wondering maybe we ought to repeal my program. Maybe we ought to leave it on the books but take all funding out, and take funding out of a whole host of other little nickel-and-dime programs, and then use that money intensely in one area.

Secretary Califano testified before this committee—or I forget which committee—that there are 132 categorical education programs. He, bright as he is, hard working as he is, finds it almost impossible to administer and to give guidance to 132 separate categorical programs. So maybe we ought to repeal 120 of those and with the 12, 18, or whatever the number is left, really try to do something with those.

So going through that kind of a thought process with respect to a program that I am desperately interested in, which I see is not getting anywhere because $29 million is not even going to come close to curing the reading disabilities of this country, I wonder if we shouldn't establish some priorities on senior citizen programs and make some hard choices.

Is nutrition the top priority or multipurpose centers, as you describe? What are the two or three things that we think are of compelling urgency and try to do those, and we know full well when we leave legal services unattended, there are some unmet needs, as described by Mr. Ehrlich and by you. We say, "Look, we haven't got the money, and if we are going to do anything, we think nutrition is vital and indispensable, and we are going to take care of those other 100 senior citizens in the Boot Heel of Missouri who can't get into the new program."

What do you think of all that?

Mr. REILLY. That is what I think is referred to as a Hobson's choice. don't think there is a single good answer to that. Frankly, that is what the Administration on Aging agonizes about.

Our approach has been to decentralize the decision authority on the selection of services to be funded right down to the lowest level, down to the community level. The purpose of the area agencies on aging is to deal with these issues at the local level. They conduct a survey of the needs and resources in that particular area, whether it is a city, or a county, or several counties. They then prioritize the needs of that particular population and direct their funding, limited as it is, to the priorities as they see them in that community; and direct their resource development and advocacy efforts to these priorities.

Senator EAGLETON. This bill, by the way, goes directly against that philosophy, of course.

Mr. REILLY. Yes; it does.

Senator EAGLETON. If we think that is a good philosophy, this bill then is dead wrong, isn't it?

Mr. REILY. Well, we always take due cognizance of the wisdom of the Congress in enacting legislation and we notice that the Congress in its wisdom had already put four priorities into title III.

Senator EAGLETON. I put that in.

Mr. REILLY. In 1975.

Senator EAGLETON. I did interrupt you. Do you have anything more?

Mr. REILLY. The general position of the Administration is opposition to earmarking within broad legislation. This is based on two premises: One, that it makes it more difficult to administer; and second, it takes away from decisionmaking at the local level.

On the other hand, there is the line of reasoning that you just put forth in terms of if you are not making much of an impact across a whole broad front, isn't it better to concentrate it and try to penetrate in depth.

Senator EAGLETON. Yes; that one guy in California is not even a pebble—he is not a rock in the pond. He is not a one-inch ripple—that one guy in California.

Mr. REILLY. I would respectfully submit that the jury is still out on that. These people are newly in place. I am more hopeful than you on that count, although I won't claim magnificent things in advance.

As far as the bill itself in concerned, the Administration is still in the process of developing its position on the amendments of the Older Americans Act. This proposal, of course, is inextricably tied up with the overall approach to the act because it deals with one of the four priorities, takes it out, and makes it even more of a priority.

Senator EAGLETON. When will you have your package up before us, next year? Will you be fairly early on it?

Mr. REILLY. Yes; I would expect that the administration bill would be ready shortly after New Year.

Senator EAGLETON. Go back to your statement, sir. I am sorry, Mr. Reilly.

Mr. REILLY. Your line of questioning pretty well took me through the points that I wanted to deal with.

One additional point that I would like to get on the record is that our view of legal services is a very broad one. It includes, as we see it, lawyer services, the services of paralegals, and also something that I don't have a good title for, but what might be called eligibility counselor services.

It is our feeling that you don't necessarily have to be either a lawyer or paralegal to advise older people on things like applying for tax rebates or circuit breaker types of benefits at the local level, or helping them with their medicaid filings or SSI applications. As a matter of fact, one of the things that we see as a potential is older people training other older persons in this kind of role, and having that kind of voluntary service available broadly throughout the communities.

That is our view of the breadth of legal services. We are looking at the provisions of the bill. We are looking at it in the context of the questions you pose, and at this point our position is still under development.

Senator EAGLETON. Senator Chafee?

Senator CHAFEE. I would just like to say that I share the chairman's concern about diffusion of resources in areas where we may not be able to accomplish much because we are not doing enough.

You don't mention this in your testimony, Mr. Ehrlich, but I just think another area that is going to present legal problems for the elderly is this act we are currently working on now—which is obviously going to pass—and that is the extension of the retirement age to 67 or 70. I think we are going to find a whole host of cases of people who are going to be laid off now or discharged in their early sixties before they are 65, because some employers aren't going to be willing to keep them whereas they were willing to keep them to 65, if they have to keep them until age 70. Thus there will be all kinds of reasons to get rid of them now, and this presents a whole new legal field.

Now, I am not sure those people would meet the income limitations as set forth in the section of 75 percent of the poverty level, but I think we are going to see a lot of litigation in that area.

Mr. EHRLICH. I want to comment on that. It underscores our own view that whatever one's position on different programs, legal services are different in the sense that the basic rationale is providing

people with a chance to use the legal system, to make good on our promise of equal justice, and to make the whole system work right. If they don't have that access, the whole system is skewed, and what the Congress is trying to do in that act, or indeed in the other, just doesn't happen. Indeed, what we have found across the country—and we have done some surveying work—that councils for the aging of State groups have said that legal services are a priority, and they set up hot lines for questions from the elderly and time and time again most of the questions come back in terms of, what are my legal rights in terms of this provision or that one, and that underscores why they are so important.

Senator CHAFEE. You know much of your caseload must be dealing with Government programs, social security, veterans' benefits, and so forth, and of course, a lot of that is handled by the caseload within the Congressman's or Senator's home office. I suppose that is an area you could send some of your caseload to—or perhaps you do.

Mr. EHRLICH. Time and time again, Senator, what happens is——

Senator CHAFEE. Maybe we send them back to you.

Mr. EHRLICH [continuing]. Is that the office of the Congressperson or Senator sends the problem to the Legal Services Office because it takes an enormous amount of time. Sometimes it is just a telephone call or inquiry, but often it is a good deal of time, and it is a complex procedure. Most don't involve any litigation. Only 15 percent involve litigation, but they do take time, energy, and a good deal of expertise.

Mr. REILLY. If I may, my associate, Mr. Gary Kolb, has reminded me of something rather interesting that has been going on in Rhode Island. Another one of our model project awards is to the American Association for Retired Persons for training older volunteers. They have been training 50 or 60 older persons to operate in Rhode Island in liaison with this legal service developer at the State agency and in liaison with Legal Service Corporation offices.

This is an example of one paid staffer at the State level having a network of persons that can actually work with legal offices and older people throughout the State.

Senator CHAFEE. Thank you very much.

Senator EAGLETON. Thank you, gentlemen. We appreciate it.

[The prepared statement of Mr. Reilly follows:]



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FOR RELEASE ONLY UPON DELIVERY

# TESTIMONY

BY

DONALD F. REILLY

DEPUTY COMMISSIONER

LEGAL PROGRAMS FOR THE ELDERLY

ADMINISTRATION ON AGING

BEFORE

SUBCOMMITTEE ON AGING

COMMITTEE ON HUMAN RESOURCES

UNITED STATES SENATE

1224 DIRKSEN SENATE OFFICE BUILDING

9:00 A.M.

OCTOBER 4, 1977

Mr. Chairman and Members of the Subcommittee, my name is Gary Kolb. I am currently serving as Special Assistant on Legal Programs for the Elderly, Administration on Aging, Office of Human Development Services, Department of Health, Education, and Welfare. In this position, which I have held for the past month, I am responsible for monitoring AoA's efforts to provide more effective legal services for older Americans. I am happy to be here today to discuss some of these efforts with you.

The need to improve the accessibility of quality legal services for older persons is a growing concern to all of us. Older persons constitute the fastest growing segment of our society. In 1970, there were over 20 million persons 65 years of age and older, and an additional 8.6 million persons between the ages of 60 and 64. Today, it is estimated that approximately 23 million persons living in the United States are 65 years of age and older, while another 9.3 million are 60-64 years of age.

In a society of increasingly complex laws and regulations, older persons find themselves at a distinct disadvantage. Although they have many of the same legal problems as any other age group, such as general housing and consumer problems, they also have unique problems associated with their age: age discrimination in employment, mandatory retirement practices; pension practices; eligibility practices and a lack of easily understood information for participation in Social Security, Supplementary Security Income, Medicare, Medicaid, Food Stamp and other benefit programs; subsidized housing problems; institutional practices; problems in obtaining a driver's license, health and life insurance and other necessary privileges and protections because of age; problems in

completing forms of special benefits, such as homestead tax exemptions or other tax rebates; increased vulnerability to deceptive practices; and victims of criminal acts.

Impaired mobility is an additional problem for many older persons. Even if legal services are available, they many not be accessible to those who need it most.

A recent national survey by the American Bar Association and the American Bar Foundation indicates that 30.6 percent of persons 65 years of age and over experienced one or more legal problems in a two-year period. This means that approximately 7 million older persons, age 65 and older, experienced one or more legal problems during the same period. There are probably thousands and perhaps millions of additional older persons who do not recognize their problems as "legal."

The term "legal services" is, however, inadequate to describe the advocacy services needed by the elderly. Such services are "legal" in the sense that they involve some aspect of the law, but they are much broader than the traditional "lawyer services." Indeed, whenever an older person seeks to secure his/her basic rights and privileges, whether it be for efficient community services, suitable housing, medical care, personal freedom or elimination of discriminatory practices in employment, it is the art of advocacy, whether practiced by a lawyer, non-lawyer or the older person himself/herself, that is needed. The Older Americans Act is predicated on such a concept of advocacy.

The 1973 amendments to the Older Americans Act established a network of State and area agencies on aging responsible for the development of a system of comprehensive and coordinated services for older persons. The 1975 amendments to the Act defined "social services" to

include legal services and required every State plan to include one or more of four specific priorities, including legal services. In the remarks which follow, I would like to address specific areas of legal services activity undertaken by AoA in furtherance of this legislative mandate. I will conclude my remarks with some comments about our future activities.

In July 1975, prior to passage of the 1975 amendments to the Older Americans Act, the Administration on Aging launched a significant national legal services effort to expand legal services throughout the aging network. Eleven legal services model projects received one-year grants totaling 1.2 million dollars under Section 308, Title III of the Older Americans Act.1/

The specific goals of the model projects were to:

1. Inaugurate a process resulting in the inclusion of a legal services component within each of the comprehensive coordinated services structures being developed through the State and Area Agencies on Aging.
2. Initiate a process which will help insure that legal services activities designed to meet the needs of older persons can be staffed with trained professional and para-professional personnel.
3. Develop a limited number of innovative model projects that involve working with and through the State and Area Agencies on Aging.

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1/ Technical assistance and materials development projects: The National Paralegal Institute ($150,000); Legal Research and Services for the Elderly, National Council of Senior Citizens (249,607); Legal Services for the Elderly Poor, Presbyterian Senior Services ($44,600);

This initial phase of technical assistance, training and innovative/service delivery projects was continued in 1976 and 1977 with an additional $705,741 of Title IV-A funds being made available in 1977 to support legal training projects for non-lawyer advocates, law students and lawyers. 2/ Technical assistance, training and innovative service delivery projects remain as important components of the Administration on Aging's commitment to assisting the State and area agencies on aging in developing legal services programs for older persons.

A second area of the Administrationon Aging's legal services activity is the Model Project Legal Services Development Program. In order to maximize the capacity of the State and area agencies on

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1/ (cont'd)

The National Senior Citizens Law Center, University of Southern California ($225,000); Connecticut Aging Legal Services, Tolland-Windham Legal Services ($33,406); and the University of Michigan Law School ($91,032). Innovative model projects: California State Office on Aging ($121,000); National Retired Teachers Association/American Association of Retired Persons ($85,000); Senior Adults Legal Assistance ($47,322); Louisiana Center for the Public Interest ($70,432); and the National Law Center, George Washington University ($75,860).

2/ National Law Center, George Washington University ($171,172); Antioch School of Law ($68,861); Institute of Gerontology, University of Michigan ($68,089); National Paralegal Institute ($199,690); Louisiana Center for the Public Interest ($137,929); and Senior Adults Legal Assistance ($60,000).

aging to fully develop legal services for older persons throughout the state, the Administration on Aging made available $1,125,000 under Section 308 of Title III of the Older Americans Act to give each State the opportunity to establish a legal services development model project beginning on January 1, 1977.

The goal of each development project is to support and strengthen the activities of the State and area agencies on aging in expanding the accessibility of quality legal services for older persons throughout the State. In so doing, the State Agency on Aging will work closely with other divisions of State governments, area agencies on aging, local legal services and legal aid organizations, State and local bar associations, voluntary organizations, community services organizations, law schools and other educational institutions, to insure the success of the effort.

The Administration on Aging fully anticipates that every State agency on aging, as well as that of the American Samoa, Guam, Puerto Rico and the Virgin Islands, will be participating in the Legal Services Development Programs during fiscal year 1978.

The third major legal services activity of the Administration on Aging is the Statement of Understanding entered into with the Legal Services Corporation on January 18, 1977. The purpose of the agreement is to promote a cooperative working relationship between both agencies and their grantees in encouraging a sensitization to the problems of the elderly and the maximization, without duplication, of both agencies to secure quality legal services for older persons. Specifically, four objectives are stated in the agreement:

1. To expand the awareness by legal personnel of the legal concerns and problems facing older persons;
1. To expand the understanding by older persons of their legal rights;
3. To increase the number of legal personnel trained to serve and working on behalf of the elderly of the nation;
4. To improve the access of older persons to existing legal services and to increase the number of communities in which such services are available.

Each agency has agreed upon a number of steps to be taken to assure the achievement of each of the objectives. A copy of the complete agreement is attached to my prepared statement and submitted for the record.

I have briefly outlined for you the activities of the Administration on Aging in the area of legal services. It would be premature to take a position on S. 1282 at this time since the Administration's position on the Older Americans Act Amendments is still under development. The Administration on Aging does, however, welcome the opportunity of working with the Congress on this very important area in the field of aging.

Mr. Chairman, this concludes my prepared statement. I will be happy to try to answer any questions you may have. Thank you.

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Senator EAGLETON. Our next witness is Mr. David Marlin, director of Legal Research and Service for the Elderly, National Council on Senior Citizens.

Mr. Marlin has suggested an amendment and alternative to S. 1282. Mr. Marlin.

Accompanying Mr. Marlin is Harriette Fox.

Mr. Marlin and Miss Fox, go ahead.

**STATEMENT OF DAVID H. MARLIN, DIRECTOR OF LEGAL RESEARCH AND SERVICE FOR THE ELDERLY, NATIONAL COUNCIL OF SENIOR CITIZENS, WASHINGTON, D.C., ACCOMPANIED BY HARRIETTE B. FOX, PLANNER**

Mr. MARLIN. Thank you, Senator.

As the committee knows, the National Council of Senior Citizens has been privileged to have been a pioneer in this area. We were selected by the Federal Government in 1968 to sponsor the first national effort to identify and attempt to resolve the legal problems of older persons. Since we've stayed the course, we have been participants, and often the prime movers, in every major development in this area:

We administered the 1968–1972 OEO demonstration program which established the first 12 elderly law projects in the country.

Creation of the poverty program legal backup center in 1972.

Senator EAGLETON. Mr. Marlin, I don't want to throw you for a loss. The committee was supposed to end its hearings at 11 under the Senate's rules. I am willing to stretch it a bit, but we will not be able to take eight pages of testimony so can you pick your highlights, if you will.

Mr. MARLIN. I will.

Senator EARLETON. So that people know the Senate rules, especially late in the session, the committees are denied the right to meet while there is action on the Senate floor. We are going to cheat a little but not forever.

Mr. MARLIN. Fine.

Let me discuss two things, the second of which is the objections that we have to the bill and our suggestions for improving it.

First, we share the chairman's concern expressed in the discussion this morning about whether it is appropriate to add a separate section to title III authorizing legal services.

Our organization of 3½ million older Americans, which has been involved in legal services since 1968, bridges the interests of older persons and the legal services movement.

We found this a tough question ourselves and have given it a lot of thought. We believe a separate section in title III is appropirate both because of the special services that lawyers and paralegals supply to older persons in resolving their problems and also because of the particular vulnerability that legal programs have.

You recall the attempt not too long ago in California when Governor Reagan attempted to stop a statewide rural legal services program because it was being an effective advocate. There is a similar problem in Mississippi where, under the State attorney general's ruling, legal

services for older persons have been made ineligible for title XX funding.

We think on both counts—both the benefits derived and the special protection that is needed—that your decision, engendered by your staff, as you put it, to create a priority for legal services was a good one. We think this bill is evolutionary for that effort.

Now, getting to the points of our disagreement with the bill. The most significant, the one our organization cares so deeply about that our support for the bill hinges on, is our position that it is not appropriate to provide a legislative directive or preference as to who may be the legal service provider on the local level.

The bill, as originally drafted, made it almost mandatory that all of the money went into Legal Services Corporation projects. I couldn't help but feel as Mr. Ehrlich testified this morning that he felt S. 1282 was an amendment to the Legal Services Corporation bill, which increased the Corporation's appropriation, instead of an amendment to the Older Americans Act.

We feel very strongly that the decision of which local legal services provided is selected by the AAA be made locally, that flexibility be permitted for the area agencies on aging and that the new, the burgeoning movement in the delivery of legal services today—represented by prepaid plans, low-cost referral systems, and the clinics which which have begun to flourish now that lawyer advertising is permitted under the recent Supreme Court decision—that these efforts have an opportunity to be funded under this program. The way the bill is presently drafted they would be prevented because there are two statutory priorities: Legal Services Corporation projects and programs that have demonstrated experience.

In my prepared statement, we list a number of projects begun in the last few years by bar associations, law schools, and others who have with a small amount of money from area agencies, started programs and provided a service that otherwise would not be available. So we think this is a critical point.

Our second disagreement with S. 1282 is with respect to a new authority provided to State agencies themselves. One of the provisions of the bill puts the State agency into direct client service. The lawyer on the State agency staff could take clients. We think that violates the principle of the Older Americans Act that State agencies should not be direct service providers. We think it is wrong and should be deleted.

There are two other points in our prepared statement. They relate to the matching requirements and the formula for the distribution of funds. The act, perhaps inadvertently, changes the present system, and we feel legal services should be treated the way all other social services are with respect to matching requirements and the distribution of funds into State and area agencies.

That summarizes the testimony, Senator, and if there are any questions I will be glad to respond to them.

Senator EAGLETON. Very good. I appreciate your willingness to distill it, and your entire statement will, of course, appear in the record.

If S. 1282 is enacted in either its present form or its modification, such as you suggest, would we then delete the existing priority in title III insofar as legal services are concerned?

Mr. MARLIN. I would. There would be no need for it because the priority would in fact be shifted to another section of title III.

Senator EAGLETON. What coordination, if any, do you have as the Legal Research and Service for the Elderly with the National Council on Senior Citizens—that is your job and duty—what sort of coordination do you have with the Legal Services Corporation. Mr. Ehrlich's group?

Mr. MARLIN. We have no direct tie-in. We provide technical assistance to 20 States for the Administration on Aging. The Legal Services Corporation provides technical assistance to almost all the other States. So we have a close working relationship but that is the only direct connection.

We are a private organization, a private nonprofit organization, that has been active in this area on a voluntary basis since 1968 because of our concern for older persons and our desire to assist them.

Senator EAGLETON. What comment do you have on the training activities that are authorized under title IV and with other title III programs?

Mr. MARLIN. Well, we deal with that in our testimony. It is our suggestion that the training activities continue to be funneled through title IV. As S. 1282 now stands, training is authorized under title III. I don't know whether that was an oversight but it is our feeling that such a change is not necessary or desirable and that the Administration on Aging is better served by keeping training only in title IV.

I want to add, if I may, one quick thing.

Senator EAGLETON. Yes, go ahead.

Mr. MARLIN. You raised a question about how the poor soul in California, the State legal services developer, is going to do a good job. Without commenting on what is happening in California let me tell you our experience. We were funded in 1974 by the Administration on Aging to be a technical assistance catalyst for getting legal representation for elderly persons in the six States in region III. That is the same function the developers now have. I know one person can do a lot. You work with legal providers and with the aging network. If you are persuasive enough, a good salesman and you understand the field, you can help them design programs, and get a little bit of funding together to start new programs.

I can give you an example. In Pennsylvania, by working with the State office of aging, funding was supplied for two statewide programs that have enormously enlarged the legal resources available to older persons in that State. I think the legal services development program that AOA has begun is a good program. I hope it lasts a sufficient time so we can make a judgment about it.

Senator EAGLETON. Well, I know that your area of responsibility is with legal services, and that is what it should be, but next year when we get the administration's Older Americans Act package and all of the various senior citizens groups testify, including the organization with which you are affiliated, the National Council of Senior Citizens, we are going to ask for some priority evaluations from those witnesses. We are going to ask them to rank those areas of greatest need, whatever they may be, say nutrition, housing or whatever.

I, for one, am going to look very closely at the whole range, and we may have to decide to do away with some programs as unthinkable as it might be. I think it is rare indeed that any program ever created by Congress is ever uncreated. It has a self-fulfilling momentum, but I am troubled, as you can infer from my questioning of the other witnesses, about nickel and diming it around in some of these programs. In order to get the ball rolling I am going to put in a repealer of perhaps a couple of my programs as a showing of good faith, because I have seen too many minuscule efforts. I think there is an element of deception in that, quite honestly, when Congress passes one of these great bills which has a great title and we are going to have all of these programs for the elderly or poor kids or the jobless. They all have a good title, and, my God, everybody is going to get to work and all that, and if we don't put much money in it I think we are perpetuating a kind of deception on the public. The newsletters go out to the interested groups saying here is this new law passed by Congress, and it is going to take care of needs in a certain area. My right to read program for instance, has $29 million in it nationwide, which is incredibly inadequate. I think maybe we ought to do a few things better rather than so many things so poorly. It really troubles me.

Mr. MARLIN. What you have said is very thoughtful, and if I were an older person in the community in Missouri you visited during the recess and I had a choice between nourishment and a lawyer, I would take nourishment.

Senator EAGLETON. Yes.

Mr. MARLIN. I also feel, however, that we should look at some of the broader benefits accomplished with modest amounts of Federal money used to provide legal resources for older persons under the Older Americans Act. You will find State statutes curbing abuse in the sale of hearing aids, you will find State statutes controlling the ill effects of the transfer of rental property into condominium ownership.

The Senate Special Committee on Aging just this past month published a model State statute we wrote on protective services for older persons, covering the range of guardianships and involuntary commitments.

Senator, as a lawyer, you know that laws affect whole populations. That is a basic reason why I feel legal services deserves a priority in the Older Americans Act.

Senator EAGLETON. It is well said, and it is very, very appropriate. Thank you, Mr. Marlin. I appreciate your comments.

[The prepared statement of Mr. Marlin follows:]

TESTIMONY OF DAVID H. MARLIN, DIRECTOR
LEGAL RESEARCH AND SERVICES FOR THE ELDERLY
Sponsored by the
NATIONAL COUNCIL OF SENIOR CITIZENS
Before
SENATOR THOMAS EAGLETON, CHAIRMAN,
SENATE SUBCOMMITTEE ON AGING
Regarding
S. 1282, A BILL TO AMEND THE OLDER AMERICANS ACT
OF 1965 TO PROVIDE ASSISTANCE FOR LEGAL SERVICES
PROJECTS FOR THE ELDERLY.

October 4, 1977

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Thank you for inviting the National Council of Senior Citizens to testify on S. 1282, a bill to amend the Older Americans Act in order to greatly expand the availability of legal representation for the nation's elderly.

As the Committee knows, we have been privileged to have been a pioneer in this area. We were selected by the Federal Government in 1968 to sponsor the first national efforts to identify and attempt to resolve the legal problems of older persons. Since we've stayed the course, we have been participants, and often the prime movers, in every major development in this area:

- The 1968-72 OEO demonstration program we administered which established the first 12 elderly law projects in the country.
- Creation of the poverty program legal backup center in 1972.
- Inclusion of legal services as a listed social service under the Older Americans Act in 1973.

- Creation by the Administration on Aging of technical assistance grants, demonstration programs and training projects beginning in 1974.
- Creation of priority status for legal services under the Older Americans Act in 1975.
- Funding by AoA for lawyers attached to each state office on aging to develop legal representation for the elderly in 1976.

One would expect, considering our role through the years, that the National Council of Senior Citizens would be enthusiastic supporters of S. 1282. The bill is, in fact, a logical evolution building upon past achievements. We support the bill, and do so strongly, provided certain changes are made.

Before discussing the bill, I would like to comment on a point that will surely be mentioned by others -- that is, whether it is appropriate to create a separate Title III section for legal services, thereby giving it a status beyond other Title III services.

We have concluded, after considerable review, that legal advocacy is important enough to senior citizens, and to the social welfare of the country, to justify according it separate authorization and funding under the Older Americans Act.

It deserves special treatment because legal advocacy is an essential tool for securing the whole range of income, health, housing and social services entitlements so essential to the well being of older persons. It deserves protection because lawyers, in pursuing the interests of their clients, sometimes threaten or antagonize political interests which, in turn, causes fiscal vulnerability.

Let me illustrate briefly both points. As to why priority is needed:

1. AoA funded lawyers in New York and Florida have prevented the traumatic and disruptive involuntary transfer of nursing home patients without notice and an opportunity for hearing.

2. The interests of older persons in preventing abuses in the sale of hearing aids, or involuntary commitments, or the provision of funerals, or the sale of prescription drugs, or the conversion of rental units into condominium ownership, or the involuntary retirement of persons willing and able to work - all have been represented by AoA legal projects.
3. The income and service entitlements of entire state populations of older persons have been protected against loss by AoA funded elderly law projects. Examples range from enjoining the cutoff of emergency fuel assistance to elderly persons in Vermont to securing over $300,000 in cash transfer payments in a single month period for older Californians.
4. Less spectacular, but as important, thousands of individuals have been helped to overcome personal problems relating to consumer fraud, rent gauging, missing checks and other legal matters.

As to why special protection is needed, the attempt by a California Governor a few years ago to terminate its Rural Legal Assistance program because it was an effective advocate should not be forgotten. Nor should we overlook the recent opinion by Mississippi's Attorney General prohibiting the Mississippi Department of Public Welfare from utilizing Title XX funds to provide legal services for the elderly. No other AoA program has such vulnerability.

What then, do we object to in S. 1282, as revised:

1. The authority of AAA's to use their judgment in selecting the best local service provider is violated.

The original S. 1282, introduced last February, required all AAA funding to be awarded to Legal Services Corporation grantees, "whenever possible," and made exceptions practically impossible. As revised, S. 1282 continues the preference for LSC projects and adds a preference for other providers with "demonstrated experience."

Relegated to no preference are any new project proposals submitted for funding by a non-LSC agency or one without previous demonstrated delivery experience.

Why is this unacceptable?

1) First, it violates the philosophy of the Older Americans Act by interfering with the autonomy Congress has theretofore provided AAA's - that is, the local AAA has been permitted discretion to chose the provider of all social services under Title III.

2) Second, it substitutes for the judgment of the local on-the-scene staff of the responsible local agency an arbitrary standard from Congress.

3) It impedes competition among local service providers. which hinders the development of cost-effective quality programs.

4) Finally, it ignores the valuable new programs that have begun and which we can expect in the future.

Over the last few years there has been considerable success in persuading the private bar, bar associations and law schools to undertake the representation of older persons for a modest grant from an area agency.

These have all been new programs by non-LSC projects or projects with no demonstrated expertise. They should be encouraged by Congress - not relegated to second choice and perhaps made impossible.

Close to home, for example, the area agency in Baltimore supplied a small grant to the University of Baltimore Law School to begin a community legal education program and the representation of clients at the new Waxter Senior Center. A similar effort operates in Montgomery County, Maryland by the County Bar Association.

In D.C., the area agency funds a legal project demonstrating how older volunteers can serve as paralegal assistants.

In Bradenton, Florida, Title III money funds an attorney who

refers cases he cannot handle to a private bar panel, which supplies services pro bono or at a reduced fee.

In Tennessee, three area agencies have made grants to establish new projects operated by community groups and staffed by retired attorneys.

In Georgia, the Atlanta area agency has supported the establishment of a bar association panel of 200 attorneys who provide free and reduced-fee services.

In Maine, three area agencies have created a statewide program in which circuit riding attorneys assist permanently stationed paralegals and provide services in senior centers, nutrition sites and senior housing.

2. The preference, even as revised, may well inhibit rather than facilitate the efficient and economical expansion of legal representation to the nation's elderly.

Currently less than 300,000 of the nation's 24 million elderly receive service annually through publicly financed legal programs. Legal Services Corporation offices currently receive the lion's share of this funding and operate the majority of the projects serving older people in the country today. In the 20 states we service for AoA, for example, 72% of all AoA funding has gone to LSC programs.

Based upon current expenditures and service levels of the Legal Services Corporation (in fiscal '77 the Legal Services Corporation expended $125 million and handled 1.5 million cases), even if all the $20 million authorized by S. 1282 for fiscal '78 went into similar programs, at best only 240,000 additional older persons would be served. That means 23.5 million older persons would remain unserved. Of these, at least 14.5 million, according to the American Bar Foundation, demonstrably cannot afford to secure representation as individuals in the private market.

Older Americans Act money must, therefore, be used to stimulate low-cost, self-sustaining legal programs in the private market as well as to support free public services for the elderly poor. Such

an investment, we believe, is not only essential but also timely.

Today, across the country, consumer cooperatives, trade unions, credit unions, private non-profit organizations, minority groups, students and churches are developing for the first time legal programs which meet their needs and their pocketbooks.

These new forms of legal services delivery, all stimulated by the recent Supreme Court decision permitting lawyer advertising, include community legal clinics, prepaid legal plans, and reduced fee lawyer referral systems.

All of them provide services at costs well below the current charges of traditional private practitioners. They are able to do so because they rely upon group purchasing power and economies of scale, routinization of legal matters, efficient use of paralegal as well as attorney staff, and the development of preventive law and self-help techniques.

Older persons as a class have not yet become part of this movement. They must if their legal needs are to be met. Funds provided by this bill could be used to incorporate older persons into low cost systems or to test out as yet untried delivery methods. These are the options that need to be developed on the local level so that millions of older persons will have assistance. S. 1282, even as revised, prevents new ideas, new programs, new initiatives.

We suggest the bill be amended to permit area agency independence and let AoA promulgate guidelines that will encourage local initiative and competence.

3. Third, the bill violates another principle of the OAA by putting state agencies into direct service.

State staff, presumably the new and promising legal services developers, are permitted to provide direct client representation. Not surprisingly many state agency directors oppose this, as do others who realize that the attraction of handling cases will inevitably result in little time for the more difficult job of being a statewide catalyst for legal programs.

4. The bill disregards a basic purpose of Title III by permitting the bulk of the funds to be used for purposes other than direct services.

As currently drafted, the bill provides that states could retain nearly all of their allotment for planning and administrative functions. In addition, states are permitted to use these funds for in-service training activities which are now supported exclusively under Title IV of the Act.

Our recommendation is that S. 1282 require that the states pass through 80% of their allotment to planning and service areas, with and without area agencies, so that the maximum number of elderly law projects can be created. Of the funds reserved by the states, none should be applied to training.

5. The bill also violates well established OAA policies pertaining to the distribution and matching of Title III funds.

For example, the formula for distributing funds to the states is changed so that less populated states would receive a smaller allocation for legal services than for other social service. In addition, no formula is specified for the allocation of funds by states to the AAA's and PSA's. We recommend that the bill incorporate the existing Title III formula.

With respect to cost sharing, legal services, we believe unintentionally, is disadvantaged compared to other social services. The bill requires that states match their entire Federal allotment at 25% whereas states currently match only administrative funds on a 75-25 percent basis. This shift in policy could result in states electing not to accept legal services funds. Our recommendation is that cost sharing policies established under Title III for states, area agencies and direct service providers be incorporated into the new legal services section.

In no instance, of course, is it fair for a LSC project to use Federal funds, here LSC funds, for a local match. Yet the revised S.1282 permits that. We believe it places all other funding applicants at a disadvantage. It is self-defeating as a stimulant to competition.

6. The maintenance of effort equirement should be made clear.

We understand that it is the intention of S. 1282 to bar any recipient of funding under this section from using these Older Americans Act funds to provide services previously supported through other sources. The National Council supports a maintenance of effort requirement but believes that recipients also should be required to make every effort to increase the amount of services provided to the elderly with other funding.

We want to conclude by underscoring our support for the basic purpose of the bill and expressing our gratitude to the Chairman and Senator Kennedy for their persistent efforts to secure representation for older Americans.

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Senator EAGLETON. Our final witnesses are Mr. Ed King and Mr. Bob Cohen, representing the National Senior Citizens Law Center in Los Angeles.

This project is also funded by the Administration on Aging.

Gentlemen, we welcome you, and the State of California has been mentioned at these hearings just for illustrative purposes, but you may want to address yourself to some of my comments or Senator Chafee's.

If your statement is lengthy, put it in the record and give us the highlights.

**STATEMENT OF EDWARD C. KING, DIRECTOR OF WASHINGTON, D.C., OFFICE OF THE NATIONAL SENIOR CITIZENS LAW CENTER, ACCOMPANIED BY ROBERT COHEN, STAFF ATTORNEY IN LOS ANGELES**

Mr. KING. My name is Edward King. I am with the Washington, D.C. office of the National Senior Citizens Law Center. Bob Cohen is with our principal office, which, as you have noted, is in Los Angeles, Calif.

Senator, you mentioned we are funded by the Administration on Aging. That, of course, is true, and under that grant we presently assist in developing legal services for the elderly.

We are also funded by the National Legal Services Corporation as a national support center to assist local legal service programs in their representation of clients.

We believe S. 1282 is an excellent step in the direction of solving some of the problems that presently exist with respect to the funding and provision of legal services for the elderly.

In the first place, as we noted more extensively in our written statement, which we understand will be included in the record, there is a great need for supplementation of the efforts and facilities available from the Legal Services Corporation to provide legal services to the elderly. Particular characteristics of legal service program staff and of the elderly themselves, give rise to some problems, and I think it is worthwhile to make special note of the feelings of the elderly toward legal services because of Senator Chafee's questions about them.

He asked whether some elderly persons would frequent legal services offices disproportionately as a kind of social outlet, in a search for somebody who will relate to them.

Quite the contrary is true. The experience has been that relatively few elderly persons find their way to legal services offices. Those that do constitute approximately, as best one can estimate, 6 to 8 percent of the caseload, whereas the elderly are approximately 20 percent of those eligible for representation.

I think that is traceable to a number of things. In the first place, legal services offices, are typically rather hectic, hard-pressed operations, hardly conducive to development of social relationships. Second, most elderly persons have been working and independent in earlier years, never learning to "work the system." When they advance in age and now have fixed incomes, with added problems such as inflation, as you mentioned, they then have difficulty in recognizing that their rights have been violated and in determining to assert their rights.

They are loathe to seek out programs that they identify as forms of charity and many elderly persons are reluctant to identify with other members of the poor. On the other hand, staff members of legal services programs tend sometimes, I'm afraid, to concentrate on problems of minority groups and younger people, to the exclusion of elderly issues, because of their own view of the poor.

Another factor that needs to be added, is that legal service programs are considerably underfunded. There is a tremendous caseload when office doors are merely left open. Legal services attorneys and advocates find themselves overloaded and are hardly likely to engage in outreach, which will increase their overload. The result is that groups with special outreach needs do not receive the outreach they might otherwise have, and I think that is a fair explanation as to why the elderly por are underrepresented in the legal service context.

There are other problems with the Legal Services Corporation insofar as its adequacy to address fully the needs of the elderly. In the first place, there are areas, of course, where legal services offices are not located. Second, it cannot serve the near poor, the large number of people that have great needs, but have incomes above the eligibility guidelines. Thus, while the efforts of the Corporation provide a solid foundation, there is a great need for specialized efforts and funding to address adequately the legal needs of the elderly.

The Older Americans Act in present form is not sufficient to fulfill this need. There are a number of problems with the act as it stands. The seed money concept, of course, has been mentioned already. What that assumes is that a program, if it is effective, will demonstrate its worth to a local community and some local benefactor or governmental unit will then take up the funding of the program after 3 or 4 years.

I think it is important to understand why this concept may work for social services generally but not for legal services. The importance of these "other" social services has already been emphasized and there is no suggestion here that they are somehow inherently of less importance than legal services. The point that is relevant here, I think, is that the legal services programs tend to serve as a catalyst for those other social services as well as a prodder for the community generally.

In the course of advocating the right of an individual to receive benefits, for example, under another social services program, or advocating the rights of an individual against a strong and important business operation in that community, the legal services program inevitably makes some enemies—and powerful enemies—because it is the advocate of the poor.

In a situation like that, after 3 or 4 years, the legal services program is not likely to have enough friends of the sort that "normal" or "neutral" nonadvocacy social service, for example, a nutrition program or transportation program, might have made. So it is not likely to have continued funding.

The fact that numerous priorities and kinds of programs are in competition for funding under the Older Americans Act exacerbates the problem. When a legal services program has to look for funds in competition with social service agencies and other groups, the result is exactly the reverse of what should occur in the legal services context.

Legal services programs should work in a network with these other organizations, viewing and representing the total person, in order to assist the person effectively. There is reduced effectiveness in that representation because of the funding competition between legal services and social services organizations, and that is unfortunate.

Finally, there simply is not enough money coming to legal services programs for service to the elderly poor. All of these factors have the tendency to do a number of things. They divert the efforts of staff to funding rather than legal services efforts, thereby reducing the benefits to the elderly. They increase the insecurity of staff attorneys, who cannot plan for future years. As a consequence, there is a great deal of turnover, and therefore inexperienced staff, although elderly legal work is somewhat specialized and calls for experienced, specially trained staff.

Now, S. 1282, in our view, would address these problems effectively. In the first place, it would provide authorization for increased funding. Enactment of the bill would also serve to reduce competition between legal services and other groups by providing separate and continued funding for legal services.

Senator EAGLETON. Since we are going to be ripping apart the titles III and IV priorities that are there, then wouldn't it follow logically that we should create separate programs for transportation, home services and home repair, and give them a separate identity and then a separate opportunity for additional funding as well?

Mr. KING. In my view, Senator, legal services are distinguishable from those other activities. You mention a number of programs: transportation, alternatives to institutionalization have been mentioned by Mr. Reilly, there is the food stamp program in the nutrition area—all of those are areas that legal services relates to. Unlike other social service programs, legal service acts as a catalyst, a prodder, as I have already said, for all other kinds of social services.

For example, in the food stamp area, in a lawsuit brought recently by legal services programs, it was found that only some 20 percent of those people eligible for food stamps were receiving the benefits and required outreach in order to reach those persons. The food stamp program was not working in that instance, not because it was underfunded, but simply because it was not being carried out properly.

Without putting additional funds into the food stamp program and without changing the statutory provisions, legal services served as a catalyst to make the food stamp program do what it was supposed to be doing.

Legal services litigation concerning transportation has done the same kind of thing, resulting in regulations for mass transit vehicles that are more easily used by the elderly, and handicapped persons.

With respect to your earlier point about the skimpiness of funding and the spreading out of money in a number of different programs, it seems important to recognize that in this context, the funding that would be provided under S. 1282 would not be skimpy. It would be a substantial increase in the amount of funding.

You have $205 million presently for the Legal Services Corporation. An additional $20 million specially devoted to legal services for the elderly would be of enormous benefit in that circumstance.

Senator EAGLETON. Is that $205 million for legal services the authorization level, or the appropriation level?

Mr. KING. I believe that is the authorization level. Well, I am not sure. I believe, as a matter of fact, I believe it is the appropriation level.

Senator EAGLETON. $208 million, I am told, is appropriated for fiscal year 1978.

Mr. KING. That is correct. So S. 1282 would provide a substantial increase in the existing network, and that is important to focus upon, in particular with your concern about spreading funds too thinly on various programs.

There are a couple of concerns that have been expressed by others about S. 1282 which I believe we should pass along. Some lawyers in some legal services programs have pointed to the fact that presently their States, in dispensing Older Americans Act funds, have given legal services great priority. They feel that S. 1282 funding, standing alone, may actually be a reduction in funds in their States for legal services. To avoid such a reduction it may be useful, if legal services is deleted as a priority in title III, to give the option for local agencies to continue funding legal services from other title III money so that the present legal services for the elderly in those States need not necessarily be reduced as a result of S. 1282 and could be supplemented from other Older Americans Act funds.

In our statement, we have touched upon the advantages of Legal Services Corporation as opposed to other groups, and I will not take your time in doing that again here.

I would like to mention a couple of other things. Somehow California has become a focal point of the discussion this morning.

Senator EAGLETON. Just because of its size.

Mr. KING. If Bob Cohen, who is working with that legal services developer, could explain to you for just a moment some of things done by the legal services developer to assist you in viewing the nature of those activities, I think that might be of some use.

Senator EAGLETON. Go ahead, Mr. Cohen.

Mr. COHEN. Just a few things, Senator. First, when Dan Silver, who is the legal services developer in the State of California, realized, as the rest of us who were working in the field, that there had to be increased funding for legal services within California, and together with the State agency on aging and the State bar of California, we proposed a bill to supplement funding for legal services dealing with the special needs of the low-income elderly and other groups that he had outreached and supplementing the funding to the extent of $6.5 million.

The bill in its first effort in the California Legislature missed passing the Senate by one vote. It needed a two-thirds vote.

We had hopes for it next year when we are better organized and receive more support from local communities and more additional support from the State bar of California.

I would also note that since the legal services developer has come onboard in California, the State bar is taking an active role in supporting additional legal services to the elderly and as can be noted in our testimony, there is an endorsement of this legislation by the State

bar of California. I don't think that would have happened without the legal services developer program being implemented.

Additionally, some activities that the developer is working on include a legal services training conference on a statewide basis to make all attorneys and social service providers aware of the type of legal problems confronting the elderly; a training program under title XX of the Social Security Act to provide training to social service workers directly serving the elderly; community education projects such as a film on the need for legal services for the elderly; and extensive work with the private bar.

One aspect of S. 1282, which is most innovative, allows for support centers to provide support to attorneys providing pro bono time, private attorneys providing pro bono time for the elderly. This by itself would be a mechanism to substantially increase legal services available for the elderly without increasing the providing for the direct services or funding the direct services for the elderly through voluntary activities provided by the private bar.

Often we attend conferences and private attorneys ask us what can we do to help, how can we involve ourselves in these cases, and it is clear to us that some sort of support provided to private attorneys would greatly expand the availability of legal services to the elderly poor.

Senator EAGLETON. Very good.

You had better summarize, gentlemen, because that is a vote.

Mr. KING. I would like to read to you a resolution adopted by the board of governors of the State bar of California, which has said this:

Senator EAGLETON. I am not overly impressed with resolutions from the State bar, but you go ahead and give us the highlights of it.

Mr. KING. I am somewhat impressed. Particularly because California has been discussed, it seems pertinent.

Mr. KING (reading):

> We, the Board of Governors of the State Bar of California, a state in which a large proportion of the nation's elderly reside, recognize the specialized legal needs of the elderly, and we heartily endorse the approach to this problem embodied in legislation sponsored by Senator Kennedy and Representative Brademas.

In conclusion, we support the bill. We think it would provide effective legal services. It would be a top to an existing network. We believe when one considers those factors it makes sense, even with the other priorities, to put legal services in place and to recognize that when the other priorities are involved, legal services there also because it plays an important part.

Last, I would point out alternatives to the institutionalization area, as one example, because I know that is important in the Senator's mind. We have been recently asked to work with a group of citizens and residents in a large governmental hospital who object to the fact that it does not provide any support services, provides no alternatives to institutionalization. Because legal services is responsive to community groups it tends to be where the priorities are, and it should not be seen as something that is in competition with those, but something that is critical to the production of those other social services.

Thank you very much, Senator.

[The joint prepared statement of Mr. King and Mr. Cohen follows:]

TESTIMONY OF

EDWARD C. KING

and

ROBERT J. COHEN

NATIONAL SENIOR CITIZENS LAW CENTER
1200 15th STREET, N.W.
WASHINGTON, D.C. 20005

Telephone: (202) 872-1404

Before

THE SUBCOMMITTEE ON AGING

of

THE HUMAN RESOURCES COMMITTEE

WASHINGTON, D.C.

October 4, 1977

My name is Edward King. I am the director of the Washington, D.C. office of the National Senior Citizens Law Center. Accompanying me here is Robert Cohen, a staff attorney from the Center's principal office, in Los Angeles. We are pleased, on behalf of the Center, to accept this Subcommittee's invitation to testify concerning S.1282, a bill which we believe to be of critical importance for the nation's elderly.

The National Senior Citizens Law Center is funded under grants from the National Legal Services Corporation and the Administration on Aging. These allow us to give substantive assistance to legal services programs funded by the Legal Services Corporation and to other attorneys serving elderly persons unable to pay for their legal representation. Upon request from a legal services or other publicly funded programs providing legal assistance to the elderly, the National Senior Citizens Law Center (NSCLC) drafts pleadings, writes memoranda and briefs, assists with litigation, acts as co-counsel, otherwise participates in cases affecting the elderly, and provides legislative and administrative advocacy on behalf of clients of such programs.

Our grant from the Administration on Aging mandates us to work with State and Area Agencies on Aging in 29 midwestern and western states and the legal services developers funded in those states under Title III of the Older Americans Act, to assist them in developing and expanding legal services systems specifically designed to aid the nation's elderly. Among other activities, we attempt to make legal services programs and social service prividers more aware of and sensitive to the enormous needs of the elderly poor for legal services. We also develop materials and provide training in the special substantive areas of the law that affect the elderly.

Magnitude of the Problem; Paucity of Resources

We recognize that members of this Subcommittee are well aware of the critical need for greatly increasing the availability of legal services for persons with limited resources in our society, and particularly for the elderly. As a member of the Special Committee on Aging, Sen. Kennedy just last year conducted major and illuminating hearings on the subject of "Improving Legal Representation For Older Americans." Since then, Sen. Kennedy has demonstrated understanding of the nature of the problem and awareness of the urgent need for remedial action by introducing not only S.1282, but also other legislation which would make funds available to increase the feasibility of effective public interest involvement in administrative agency proceedings. Sen. Eagleton as chairman, and the other members of this Subcommittee, have also demonstrated sympathy and understanding by cooperating in setting hearings for this bill.

There is a certain reluctance, in addressing such persons, to discuss those basic facts and foundational considerations of which most of you are already aware. Nevertheless, there may be some utility in reviewing the fundamentals to some extent, for record purposes if none other.

A. Legal Services Under The National Legal Services Corporation Act - The National Legal Services Corporation has estimated that there are some 29 million poor people in this nation, unable to afford legal services. Of these persons Thomas Ehrlich, President of the Legal Services Corporation has said:

> "...all but a small fraction have no access to assistance when they face a legal problem. For all but that small fraction, the legal system is beyond reach. A recent study indicated that about 23% of the poor face a legal problem each year. In the main, they are relatively routine matters involving housing, consumer law, family law, and administrative benefits. But to the individuals involved, these matters often assume crisis proportions. For most people, a defective car can be a substantial irritant. But for a poor person, it may well mean unemployment. A poor person's problem with a landlord may mean no housing at all. The denial of Social Security payments can be disastrous.
>
> Legal aid lawyers are currently able to handle only about one million of these problems each year -- something less than 15% of the real need as determined on a conservative basis...." 1/

If the poor in general are underserved - and they are,[2/] the situation is especially grim for the elderly poor. To our knowledge there are none among those charged with responsibility for providing legal assistance to the poor who would seriously dispute that adequate legal service to the elderly demands special "outreach" efforts.

For one thing, the elderly have special mobility problems, including physical difficulties and fear of crime victimization, which pose greater problems for them than most other groups. Moreover, many elderly poor are unaccustomed to their new economic state. Until forced to

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1/ Remarks of Thomas Ehrlich, President, Legal Services Corporation, on Justice for the Poor: Public and Private Responsibilities; presented before the Los Angeles County Bar Association, May 5, 1976.

2/ A 1975 study of the availability of legal services to the general indigent population sheds further light on the problem. This study, performed by the Legal Action Support Project of the Bureau of Social Science Research, demonstrates a ratio of one legal services attorney to 13,239 eligible poor persons. Further, over 40% of the financially eligible persons in the United States live in locations providing no access whatsoever to legal services projects. 9 CLEARINGHOUSE REVIEW 469 (1975).

live on fixed incomes, assailed by inflation, many present elderly were mainstream middle income Americans, and consequently are not adept in relating to the institutions upon which they are now dependent. The elderly may be unique among the poor in the degree of their inability to perceive bureaucratic violations of their rights, and reluctance to enter a legal services office as one of "the poor," seeking assistance.

In the legal services milieu, the problem is exacerbated by several factors which play upon the staff. First, there may be some tendency on the part of legal services personnel to concentrate upon the problems of other groups, particularly minority groups, as more critical to and representative of the poor than are the problems of the elderly. In addition, the elderly encounter numerous legal problems which are substantively different from other general poverty law issues and call for special training and expertise on the part of the advocate.[3/]

Finally, endemic underfunding of legal services programs has special adverse effects upon the elderly. All

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3/ For example, in attempting to maintain his employment, the elderly worker encounters problems such as mandatory retirement or other forms of age discrimination. For income, many elderly depend upon social security, SSI, veterans benefits, or private or public pensions. Medicare is of critical importance for their health care. The National Housing Act contains special provisions for elderly housing, and many elderly are housed in nursing homes - a circumstance shared by few younger persons. Special elderly nutrition and food stamp programs, guardianships, conservatorships and numerous other specialized areas confront the legal practitioner representing elderly persons.

of the considerations mentioned above point to the need for concentrated legal services outreach and education for the elderly and special sensitization and education for legal services staff. Yet, because staff persons are already overloaded, there is general reluctance to engage in outreach, on grounds that outreach would simply increase the overload and reduce unjustifiably the qualify of legal assistance being given. There is therefore distressingly little legal services program outreach. While the absence of effective outreach is an understandable reaction to the inadequate funding of legal services programs, the point for purposes of S.1282 is that eschewing of outreach results in the most disproportionate underservice falling upon the elderly and other groups with special access problems and outreach needs.

Thus, although the elderly comprise some 20% of the nation's poor, they comprise only approximately 6% to 8% of the client load of the average Legal Services Corporation grantee.[4/] The low-income elderly receive far too little of the nominal legal services provided generally for the nation's 29 million poor persons. The millions of elderly people who are above the poverty guidelines,but cannot afford a private attorney, have even less access to legal representation.

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4/ An informal survey conducted in 1969 by the Office of Legal Services, Office of Economic Opportunity (OEO) produced the 6% figure. Most recently, figures obtained from legal services programs by the United States Civil Rights Commission in its current age discrimination study showed elderly persons accounting for less than 8% of the caseload of those programs in 1976 and early 1977. For further discussion of the disproportionately low representation of the elderly within legal services offices, See Terris, Legal Services for the Eldery (Senior Opportunity & Services Technical Assistance Monograph 9, National Council on Aging 1972).

The problem of providing legal services to the rural elderly deserves special mention. Very little has been done to provide the rural elderly with access to legal services. Far fewer of the rural poor have access to legal services than do their urban counterparts.[5/] Transportation problems further compound the problem of delivering legal services in rural areas to the elderly. Because of the limited mobility of the elderly the larger distances involved, and absence of mass transportation, the costs for providing legal services to the elderly in rural areas are significantly higher than for the same services in urban areas. The small number of attorneys (typically only private attorneys are available) in rural areas causes the burden of aiding the poor and near-poor to fall on the already overburdened shoulders of a few civic-minded attorneys who have very little time to spare.

B. Legal Services Under The Older Americans Act -

The 1975 Amendments to the Older Americans Act show Congress' clear intent that the Administration on Aging and its network of Area Agencies on Aging place a high priority on the provision of legal services to the elderly. Although limited progress is being made in the expansion of legal services through the network, experience under the Act has established the necessity of passage of a bill such as S.1282 in order to address properly the legal needs of this nation's low income

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5/ As few as 17.5% of the poor in rural areas have access to legal services programs through the Legal Services Corporation. Goodman and Walker, Legal Services Programs: Resource Distribution and the Low Income Population, at 57 (Bureau of Social Science Research, Inc., July, 1975).

elderly. A brief review of the problems encountered thus far under the Act may be useful to demonstrate the need for S.1282.

1. Seed Money and Multi-Programatic Funding - Programs funded under Title III of the Older Americans Act are established under the "seed money" concept, under which Federal funding of the program typically is terminated after three (3) or four(4) years. This concept is premised on the belief that a good social service program will demonstrate its value to the community in its first few years of operation, and thereafter should be able to attract local funding for its perpetuation. This premise is often wrong as applied to legal services.

By requiring advocacy service providers to compete with other social services for the limited social service money available on a local level, the present statutory scheme jeopardizes the potentiality for results which are the goal of this legislation. Such competition has an alienating effect and makes it more difficult for a legal services program to obtain community and coalition support for litigation, legislative and administrative advocacy which are most needed by the low income elderly.

Moreover, funding competition between legal services and other social services under Title III of the Older Americans Act has the effect of placing some Area Agency on Aging administrators in a very difficult position regarding advocacy.

Often effective advocacy has fiscal impact on some individual, business or governmental entity. If this is a private party who has been defrauding the elderly, the advocacy effort generally receives praise from the entire community. However, if the program has a fiscal impact upon, or causes a significant change in, a state or local program, the advocacy program and the Area Agency on Aging administrator are potentially subject to severe criticism. Many Area Agency on Aging directors have mentioned to NSCLC staff members that they would like to fund legal services, but they are afraid of what would happen if the program initiates litigation against the state or county. Therefore, given the choice of funding legal services or some other needed social service, such as homemaker health aid, or housing renovation, the Area Agency on Aging is tempted to choose a non-advocacy service. All of these factors tend, at best, to reduce the efficacy of the legal services provided under the Act. At worst, they may cause a program to compromise its advocacy efforts for the elderly in order to retain its friendship with powerful local institutions and groups and thereby assure the program's longevity.

Unfortunately, there are very limited sources of funds to replace Older Americans Act money. Such other funds that are potentially available generally come from the federal government under programs such as Title XX, Revenue Sharing, Community Development Block Grants, etc. These funds come with their own special price tag; they come at the expense

of other direct social services such as homemaker health aid, transportation, or housing renovation services. Obtaining such funds means that legal services programs must compete with friends providing social services,and thereby, at least initially, make other direct social services less available.

2. Diversion Of Efforts, Turnover, Inexperience And Support - Funding from Title III or other competitive multi-social service program funding sources inevitably causes program attorneys to divert time and energy from servicing the legal needs of the elderly to fund raising. Such diversion can only work to the detriment of the low-income elderly. Moreover, because of the competition for funds and because of generally decreasing funding for Title III legal services, turnover of attorneys after no more than two(2) or three(3) years of employment has become typical, leaving inexperienced attorneys attempting to serve the low income elderly. Title III funding arrangements are far too precarious and ephemeral to allow Title III attorney work to be seriously considered as a career possibility and the elderly community is constantly being robbed of its most experienced and possibly most effective advocates.

Attorneys and paralegals staffing local legal services programs cannot by themselves effectively serve their elderly clients. Because the legal services system is overloaded with individual legal problems and because of the limited experience and number of staff persons serving the elderly, complex individual matters and legal problems of special concern to the entire seniors community often cannot receive

the attention they require. There is continuous and increasing need for training to assist such persons to work more efficiently and effectively, and for support to assist with the more demanding issues.

3. The Private Bar - Under the present statutory arrangement, volunteer services are provided by relatively few private attorneys and do not significantly expand the availability of legal services. Private attorneys are often unfamiliar with the kinds of problems confronting the low income elderly. With little or no support, training and technical assistance available to them, too few private attorneys provide pro bono or reduced fee services for the elderly and a potentially enormous service resource goes virtually untapped.

Legal Services Under S.1282

The aforementioned problems and their adverse impact would be substantially ameliorated by S.1282.

A. Funding - The bill's most important aspect, of course, is the increased funding which it would authorize, making possible substantially expanded legal services for the elderly, in urban and rural areas. This would be accomplished in a cost efficient manner, by establishing a nationwide legal services system with a minimum of administrative cost, by utilizing, whenever possible, existing legal services programs and by avoiding the creation of unnecessary administrative structures.

By providing a separate authorization for legal services, S.1282 should reduce, nationally and locally,

the likelihood of competition between legal services and other social services for the elderly. The legal services authorization and appropriation under this bill should be seen as wholly separate from the general appropriation for social services under the Act. Thus, S.1282 appropriations should decrease the demand on other Title III funds for legal services, but should not decrease the amounts of those other Title III funds. In short, passage of S.1282 should increase the availability of Title III funds for social services.

At the same time, care should be taken to assure that funding is adequate so that passage of S.1282 does not have the effect of reducing availability of legal services anywhere. Existing programs in, for example, Minnesota and Connecticut have expressed concern that funding under S.1282 at the authorized level may not be sufficient to maintain those programs at their existing levels. Thus, the amount of appropriation is critical to this legislation; it is also important that passage of S.1282 not be used as a justification for changing other provisions of Title III and barring area agencies from continuing use of other Title III monies to prevent reduction or enhance expansion of legal services in those areas.

In addition to expanding the quantity of available legal services, S.1282 would undoubtedly improve the quality of legal services provided the elderly, the efficiency with which local programs operate, and the effectiveness with which advocacy programs interface with other social service

programs within the community. These results should flow from the elimination of the need for competition with other social services for funding, tne assurance of a continuous funding source, and reduction of the need for aggressive funding searches.

After S.1282 is enacted, we may reasonably expect the turnover of trained legal services personnel serving the low-income elderly to be reduced. S.1282 should provide for a stabilized funding source which will enable advocacy programs to continue without fear of being defunded simply because of local Title III fiscal problems. This by itself will significantly improve the morale of program employees. Stabilized funding will additionally benefit the elderly client community by enabling attorneys to spend significantly more time servicing clients as opposed to fund raising,which is practically a required activity under the present Title III structure. Furthermore, after the enactment of S.1282, trained legal personnel may begin to view legal services as a realistic career alternative which would further stabilize the personnel situation.

Because S.1282 provides for a separate earmarked fund for legal services for the elderly and eliminates advocacy services from competing with and alienating other social service programs in need of limited Title III dollars, the political interference encountered by Area Agencies on Aging in funding advocacy services will be greatly reduced. No longer could political opponents of advocacy for the low income elderly suggest or direct that

other "less troublesome" social services be funded instead of advocacy.

B. Legal Services Developers - Various organizations and groups are involved in the provision of legal services for the elderly. That the "aging network" under the Administration on Aging and legal services programs funded by the Legal Services Corporation are especially called upon to coordinate is demonstrated by the AoA-LSC interagency agreement, spelling out activities to be carried out to increase availability of legal services for the elderly. Bar associations, private attorneys, legal aid programs funded by other sources, volunteers, and organizations providing other social services all can also play an important part in providing legal services for the elderly.

There is a need for somebody directly responsible for coordinating and encouraging appropriate efforts by the respective groups. To meet this need, §310(b)(1)(A) of S.1282 would provide for staff persons within state agencies. Their principal role, substantially similar to that of legal services developers under the present statutory scheme, would be to develop, supervise and coordinate legal services for the elderly. These are important functions and provision for such persons is desirable.

Some persons have questioned the desirability of authorizing these persons to provide direct client representation, as set out in §310(b)(1)(A)(iii) of the bill. We believe this provision is desirable. While no "developer" should consider

direct client representation a major part of his role, there seems to be little purpose to be served by a prohibition against all direct representation by such persons. Some developers may encounter circumstances (e.g., litigation concerning advertising by attorneys of their willingness to serve the elderly; or opposition to improper funding cutoffs) where litigation is directly tied to development of legal services, and participation is desirable to establish the developer as an integral part of the developmental effort. Others may wish to litigate sporadically in order to be in touch with elderly problems as viewed by the advocate, to increase knowledgeability in a particular substantive area, or simply to "keep their hands in" as lawyers. Under certain, although not all, circumstances, any of these may be legitimate. So long as it is clear that direct representation is not to be considered a substantial part of any developer's role, it does not seem desirable to prohibit all developers from all litigation under all circumstances.

A caveat concerning the developer concept may be in order here. While existence of one person performing a developing and coordinating function is important, care should be taken lest this provision lead to establishment of a bureaucracy and an inappropriate drain on funds available for direct legal services to the elderly. This provision should be carefully monitored so that no more than the number of persons essential for performance of the functions described in §310(b)(1)(A) are hired by state agencies.

C. Legal Services Providers - Efforts of legal services programs funded by the National Legal Services Corporation have not proved sufficient to provide adequate legal services for the elderly. As already discussed, such programs have been notoriously underfunded. Many programs have responded by eschewing outreach, resulting in proportionately less service to groups, such as the elderly, with special access problems and outreach needs. The Legal Services Corporation Act legislation presently pending in the Congress would remedy this to some extent by providing for special efforts to groups such as the elderly with special access needs, but would not be entirely sufficient. There are still many geographical areas without legal service programs funded by the Corporation. Elderly persons in those areas would not be affected by amendments in the Act. In addition, services funded under the Legal Services Corporation Act are available only to those persons who meet the financial eligibility guidelines. There are many "near poor" among the elderly who cannot afford to pay for their own legal representation but do not qualify under the Corporation's eligibility guidelines.

But while legal services for elderly efforts funded under the Legal Services Corporation have some shortcomings, legal service programs typically have special strengths which make them logical and attractive vehicles for providing legal services under S.1282.

For one thing, legal services programs have an independent statutory obligation to provide legal services for the elderly regardless of whether S.1282 becomes law. To fund a separate program under S.1282 to provide services in an area already covered by a program funded by the Corporation would often cause a wasteful duplication of effort.

Also, established legal services programs have already gone through the costly and uneconomical "growth pains" of development. Such programs already have existing physical plants, equipment, library and support staff. Most can incorporate additional funds and expand their legal services efforts with greater efficiency than could an entirely new program.

Since legal services programs have as their principal mission the representation of the poor, legal service offices are typically located within the neediest communities. These locations provide a rough mechanism for assuring compliance with the Older Americans Act's requirement that the greatest priority be given to those with the greatest need.

Finally, legal services programs have developed a great deal of expertise in serving the poor. An elderly specialist or special elderly law component which is part of a legal services program may well profit from relationships with other attorneys working in related areas. While the elderly do have special substantive problems, they also have many problems in common with other poor persons. The elderly law specialist may often be able to draw upon the knowledge of other attorneys within the program who have encountered

similar problems in the course of their representation of other poor persons.

For all of these reasons, the preference for programs funded by the Legal Services Corporation as set forth in S.1282 is appropriate. This presumption for Corporation-funded programs is especially apt because it is tempered. The bill protects against the possibility that a particular legal services program, insensitive to the special problems of the elderly, might use funds received under S.1282 for unauthorized purposes. To obtain S.1282 funding, a program would have to establish its "ability and commitment to meet the legal needs of the elderly." In addition, the §310(b)(2)(B) maintenance of effort provision prevents legal services programs from using S.1282 funds to fulfill its Legal Services Corporation Act obligations to provide legal services for the elderly.

In our opinion, the preferences for legal services programs funded by the Legal Services Corporation and other existing programs with "demonstrated experience in the satisfactory delivery of legal services to the elderly" are eminently reasonable and desirable.

Through provision of support services by resource centers, S.1282 will effectively respond to the needs of inexperienced legal services personnel faced with complex problems which cannot readily be addressed by local programs. Such support services as currently provided by the National Senior Citizens Law Center include training, technical assistance and litigation assistance to legal services providers

serving the elderly in substantive areas of special concern to the nation's elderly. Provision of training pursuant to S. 1282 will allow resource centers to provide basic information to enable inexperienced legal services providers to effectively serve their elderly clients. Backup services provided through S.1282 (regarding litigation and technical assistance) will enable local legal services programs to provide in-depth legal assistance without committing inordinate amounts of time to any individual problem. Training and backup services are necessary to support a network of legal services providers capable of providing comprehesive and cost effective legal services to the nation's elderly. Both are provided for with S.1282.

In addition to providing legal services training, technical assistance and backup services to legal services programs, S.1282 enables support centers to provide such assistance to private attorneys doing pro bono work for the elderly. Presently many private attorneys have no familiarity with the areas of law of concern to the low income elderly. It therefore may require a major time commitment for a private attorney to provide meaningful legal services to an elderly client. With support services provided through S.1282, private attorneys should be able to save hours of research and devote their pro bono time more effectively to servicing the low income elderly. Additionally, through such support services, private attorneys will become familiar with cases such as social security appeals which are marginally fee generating and will be able to handle such cases reasonably

and profitably on their own. This development should significantly increase access to legal services for the low and middle income elderly.

By limiting support and technical assistance to private attorneys representing clients on a pro bono basis, S.1282 should serve as a strong inducement to attorneys to perform pro bono work.

Support For S.1282 From Others

We are pleased also to report to this Subcommittee the enthusiasm of others for S.1282. Recently, staff persons from NSCLC have met with legal services developers, providers and representatives of elderly consumers concerning the issue of expansion of legal services for the elderly. Meetings took place in California, Michigan, Wisconsin, Illinois, Minnesota, Nevada and Arizona and there was much discussion of S.1282. We can without reservation state that in all of these meetings we encountered solid and enthusiastic support for S.1282 bill.

We agreed to relay this support to you. We also agreed to relay to you the following concerns which were expressed about S.1282:

1. It was generally felt that the funding level for S.1282 was minimal. With initial nationwide funding of 20 million, a few programs, initially, may receive less than received under Title III as presently constituted. For example, a rural Minnesota program calculated that under S.1282 it would receive $31,000 whereas it currently receives

$45,000 under Title III. It expressed concern th-t S.1282 not foreclose the possibility of continuing to supplement legal services with Title III general social service programming monies. Similar concerns have been expressed to us by Connecticut Legal Services, Inc.

2. Legal Services programs from rural areas in Minnesota and California were concerned about the difficulty in meeting cash match requirements. They hoped that S.1282 would allow them to utilize in kind services provided by the private bar and funded through the Legal Services Corporation as match for S.1282 dollars.

3. Illinois programs wondered what would happen should a state refuse to accept S.1282 money. They suggested that an alternate organization or entity be allowed to apply for, administer and allocate the funds.

We would be pleased to discuss these concerns at greater length or elaborate upon them in writing, if the Subcommittee so desires.

Finally, we take great pleasure in informing this Subcommittee of the following resolution recently adopted by the Board of Governors of the State Bar of California:

> We, the Board of Governors of the State Bar of California, a state in which a large proportion of the nation's elderly reside, recognize the specialized legal needs of the elderly, and we heartily endorse the approach to this problem embodied in legislation sponsored by Senator Kennedy and Representative Brademas.

## Conclusion

We heartily endorse S. 1282 and we thank this Subcommittee for extending to us the opportunity to comment upon this very important legislation.

Senator EAGLETON. Thank you, Mr. King and Mr. Cohen, and thanks to everyone. That will conclude this morning's hearings on S. 1282. Thank you very much.

[Whereupon, at 11:15 a.m., the subcommittee adjourned.]

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